IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-447

WILLIAM G. MILLIKEN, Governor of the State of Michigan; FRANK J. KELLEY, Attorney General of the State of Michigan; MICHIGAN STATE BOARD OF EDUCATION, a constitutional body corporate; JOHN W. PORTER, Superintendent of Public Instruction of the State of Michigan, and ALLISON GREEN, Treasurer of the State of Michigan,

Petitioners,

-vs-

RONALD BRADLEY and RICHARD BRADLEY, by their Mother and Next Friend, VERDA BRADLEY; JEANNE GOINGS, by her Mother and Next Friend, BLANCH GOINGS; BEVERLY LOVE, JIMMY LOVE and DARRELL LOVE, by their Mother and Next Friend, CLARISSA LOVE; CAMILLE BURDEN, PIERRE BURDEN, AVA BURDEN, MYRA BURDEN, MARC BURDEN and STEVEN BURDEN, by their Father and Next Friend, MARCUS BURDEN; KAREN WILLIAMS and KRISTY WILLIAMS, by their Father and Next Friend, C. WILLIAMS; RAY LITT and MRS. WILBUR BLAKE, parents; all parents having children attending the public schools of the City of Detroit, Michigan, on their own behalf and on behalf of their minor children, all on behalf of any person similarly situated; and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, DETROIT BRANCH; BOARD OF EDUCATION OF THE CITY OF DETROIT, a school district of the first class; DETROIT FEDERATION OF TEACHERS, LOCAL 231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO,

Respondents.

# APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **RONALD BRADLEY, et al.,**<br>**Plaintiffs,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,**<br>**Defendants** | **Civil No. 35257** |

## ORDER FOR ACQUISITION OF TRANSPORTATION

Plaintiffs having moved for an order requiring the purchase of transportation equipment, and the court having reviewed the briefs submitted by the parties and having considered the arguments of counsel and being fully advised in the premises;

IT IS, THEREFORE, ORDERED, pursuant to *Bradley* v. *Milliken*, 484 F.2d 215, 258 (6th Cir. 1973), *rev. on other grounds*, 418 U.S. 717 (1974), that the Order for Acquisition of Transportation entered by this court on July 11, 1972, be and hereby is reinstated but modified as follows:

1. The State Defendants, including added defendant Allison Green, shall acquire by purchase, lease or other contractual arrangements 150, 66-passenger yellow school buses meeting the requirements of Michigan Law, to be used in the Detroit Desegregation Plan to be implemented by order of the court. Such purchase, lease or other contractual arrangements shall be consummated no later than May 28, 1975;

2. The State Defendants shall bear the costs of this

acquisition, and the State Defendants shall take all [2] necessary steps utilizing existing funds already allocated, or to be allocated, and by re-allocating existing or new funds, to pay for such transportation acquisition.

ROBERT E. DeMASCIO /s/
Robert E. DeMascio
United States District Judge

Dated: May 21, 1975





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| **Ronald BRADLEY et al.**<br>**Plaintiffs-Appellees,**<br><br>**v.**<br><br>**William J. MILLIKEN, Governor of Michigan, and Michigan State Board of Education, et al.**<br>**Defendants-Appellants,**<br><br>**Board of Education, City of Detroit, Michigan, et al.**<br>**Defendants.** | **No. 75-1668.** |

United States Court of Appeals,
Sixth Circuit.

June 19, 1975.

Certiorari Denied Nov. 3, 1975.
See 96 S.Ct. 280.

Before PHILLIPS, Chief Judge, and EDWARDS and PECK, Circuit Judges.

**ORDER**

This is an appeal from an order of the United States District Court for the Eastern District of Michigan requiring the State defendants to acquire 150 buses to be used in the Detroit desegregation plan to be implemented by the order of the District Court. The case was submitted on briefs and oral arguments this June 11, 1975.

Upon consideration, this court concludes that the District Judge had no choice, under the decision of the Supreme Court in *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974), except to order the immediate acquisition of school buses. No party to the proceeding made any representation to the contrary during the course of the hearing in this court.

Likewise, this court has no choice under the just cited decision of the Supreme Court except to affirm the result of the order of the District Court requiring the acquisition of school buses now, as herein modified. This modification is based upon the representations to this court made by the State defendants and is consistent with the spirit and purposes of the constitutional and statutory provisions and the case law of the State of Michigan as recited in said representations. Said order is modified to read as follows:

Plaintiffs having moved for an order requiring the purchase of transportation equipment, and the court having reviewed the briefs submitted by the parties and having considered the arguments of counsel and being fully advised in the premises:

It is, therefore, ordered, pursuant to *Bradley v. Milliken*, 484 F.2d 215, 258 (6th Cir. 1973), *rev. on other grounds*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974), that the Order for Acquisition [680] of Transportation entered by this court on July 11, 1972, be and hereby is reinstated but modified as follows:

1. The Detroit School Board, defendants, shall acquire by purchase, lease or other contractual arrangements 150, 66-passenger yellow school buses meeting the requirements of Michigan Law, to be used in the Detroit Desegregation Plan to be implemented by order of the court. Such purchase, lease or other contractual arrangements shall be consummated no later than July 3, 1975.



2. The State defendants shall bear the costs of this acquisition to the extent of 75% thereof[1], and the State defendants shall take all necessary steps utilizing existing funds already allocated, or to be allocated and by re-allocating existing or new funds, to pay or reimburse the State's share of such transportation acquisition.

EDWARDS, Circuit Judge (concurring).

I join my colleagues in the drafting and issuance of today's order because any final decision of the United States Supreme Court is the law of the land. But conscience compels me to record how deeply I disagree with the decision which we are enforcing. In *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974), the Supreme Court overruled this court and the United States District Court in Detroit by reversing a carefully documented finding of fact that racial desegregation in the schools of Detroit could not be accomplished within the boundaries of the Detroit school district where the school population was found to be approximately 64% black, with a predicted 72% black school population by 1975-76 and 80.7% by 1980-81. The decision also imbued school district boundaries in Northern states (which like Michigan, had never had school segregation laws) with a constitutional significance which neither federal nor state law had ever accorded them.

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1. In *Milliken v. Bradley*, 418 U.S. 717, 726, 94 S.Ct. 3112, 3118, 41 L.Ed.2d 1069 (1974), the Supreme Court said:

"The District Court also found that the State of Michigan had committed several constitutional violations with respect to the exercise of its general responsibility for, and supervision of, public education. [Footnote omitted.] The State, for example, was found to have failed, until the 1971 Session of the Michigan Legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned; during this same period the State provided many neighboring, mostly white, suburban districts the full range of state-supported transportation."

This court's opinion in *Bradley v. Milliken*, 484 F.2d 215, 217 (6th Cir. 1973), had accepted a finding by the District Judge that a desegregation plan limited to Detroit "would result in an all black school system immediately surrounded by practically all white suburban school systems, with an overwhelmingly white majority population in the total metropolitan area." The Supreme Court did not overturn that finding.

The key sentence in the majority opinion of the Supreme Court reads: "The constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system in that district." Presumably this means that if and when the Detroit school district becomes 95% or more black, immediately surrounded by suburban school districts 95% or more white, no problem of federal constitutional significance arises.

Unless the thrust of this sentence is altered by further Supreme Court interpretation or overruling — or by action in the area of racial integration by Congress or the Presidency — it can come to represent a formula for American apartheid.

Since the Supreme Court decision is based in part upon the fact that (like all Northern states) Michigan never had school segregation by state statute, the case creates one law for the North and another for the South.

I know of no decision made by the Supreme Court of the United States [681] since the Dred Scott decision (*Scott v. Sanford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1857), which is so fraught with disaster for this country.



[1096]

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| **Ronald BRADLEY et al.,**<br>**Plaintiffs,**<br><br>**v.**<br>**William G. MILLIKEN, Governor of the State of Michigan and Ex-Officio Member of Michigan State Board of Education, et al.,**<br>**Defendants.** | **Civ. No. 35257.** |

United States District Court,
E. D. Michigan, S. D.
Aug. 15, 1975.

[1101]

## MEMORANDUM OPINION AND REMEDIAL DECREE

(Findings of Fact and Conclusions of Law)

DeMASCIO, District Judge.

### I. INTRODUCTION

Our task in this on-going litigation is to formulate a just, equitable and feasible plan to desegregate the Detroit School System, taking account of the practicalities at hand. We do so in response to a United States Supreme Court mandate that we formulate a "decree directed to eliminating the segregation found to exist in Detroit City Schools." Writing for the majority of the Supreme Court, Chief Justice Burger noted that the district court and court of appeals:

> "proceeded on an assumption that the Detroit schools could not be truly desegregated — in their view of what constituted desegregation — unless the racial composition of the student body of each school substantially

reflected the racial composition of the population of the metropolitan area . . .." *Milliken v. Bradley*, 418 U.S. 717, 740, 94 S.Ct. 3112, 3125, 41 L.Ed.2d 1069 (1974).

The Chief Justice then pointed out that *Swann v. Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971) "does not require any particular racial balance in each 'school, grade or classroom.' . . ." 418 U.S. at 740-41, 94 S.Ct. at 3125. Thus, the Court did not deem it essential to furnish guidelines for desegregating the Detroit School System. Cf. *Keyes v. School District No. 1, Denver, Colo.*, 413 U.S. 189, 93 S.Ct. 2686, 37 L.Ed.2d 548 (1973). Rather, it left this court to determine what constitutes desegregation in this particular school district.

In our analysis, we have been mindful that rigid and inflexible desegregation plans too often neglect to treat school children as individuals, instead treating them as pigmented pawns to be shuffled about and counted solely to achieve an abstraction called "racial mix." We recognize that our concern is with the very young and that a just, equitable and feasible desegregation plan should not destroy the educational mission of the schools they attend. We are aware of the adverse educational and psychological impact upon black children compelled to attend segregated schools; to separate them from other children solely because of skin pigmentation is [1102] indeed invidious. But although the resulting injury is great, the remedy devised should not inflict sacrifices or penalties upon other innocent children as punishment for the constitutional violations exposed. We must bear in mind that since those committing the grotesque violations are no longer about, any such punishment or sacrifices would fall upon the very young; it is the children for whom the remedy is fashioned who must bear the additional burdens.

The necessity of preserving the educational system for whom this remedy is addressed has compelled us to scrutinize carefully plans that are rigidly structured to



achieve a racial mix, that include pairing and clustering of schools, that fracture grade structures and that include massive transportation. All of these techniques require children to spend more time going to school and divert educational dollars and energy from legitimate educational concerns.

If Detroit's school population were more equally divided between black and white or if the desegregation area were sufficiently large to permit greater equalization, it would be possible to diminish the inevitable limitations on the task of eliminating racially identifiable schools in the district. But it is impossible to avoid having a substantial number of all black or nearly all black schools in a school district that is over 70% black. The truth of this statement is best demonstrated by the desegregation plan offered by the plaintiffs in this litigation; while plaintiffs contend that their plan affords the greatest degree of desegregation, their plan leaves the majority of the schools in the district between 75% and 90% black. An appropriate desegregation plan must carefully balance the costs of desegregation techniques against the possible results to be achieved. Where the benefits to be gained are negligible, those techniques should be adopted sparingly.

Finally, an effective and feasible remedy must prevent resegregation at all costs. To ignore the possibility of resegregation would risk further injury to Detroit school children, both black and white. In a school district that is only 26% white, a remedy that does not take account of the possibility of resegregation will be short-lived and useless if that percentage of whites further decreased. A realistic desegregation plan should recognize that abuses such as optional attendance zones, gerrymandered attendance zones, discriminatory assignments, the bussing of black children away from closer white schools and school construction that knowingly tends to have segregative effects are unlikely to recur in a school system that has a majority black board of education and a bi-racial administrative staff.

The guidelines adopted by this court consider the "practicalities of the situation", and at the same time make "every effort to achieve the greatest possible degree of actual desegregation . . .." *Davis v. School Comm'rs of Mobile County*, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971). The "practicalities" that an appropriate remedy should consider encompass the legitimate concerns of the school system and the community at large. One legitimate concern deserving of weight is the undesirability of forced reassignment of students achieving only negligible desegregative results. Another of the practicalities is the shifting demography occurring naturally in the school district together with the persistent increase in black student enrollment. Still another of the practicalities to be taken into account is the racial population of the district, which is predominantly black by a wide margin. Further practicalities that must be considered by this court include the declining tax base of the City of Detroit, the depressed economy of the city, and the volatile atmosphere created by the highest rate of unemployment in the nation. Finally, the decree must consider the overriding community concern for the quality of educational services available in the school district. An effective and flexible remedy must contain safeguards that will enhance rather [1103] than destroy the quality of the educational services provided in the City of Detroit.

[1103] **II. PRIOR PROCEEDINGS**

The Detroit School Desegregation case has been in litigation for nearly five years. The plaintiffs filed this action on August 18, 1970, naming as defendants the Detroit Board of Education, its members and the Detroit Superintendent of Schools, together with the Governor, Attorney General, State Board of Education and the State Superintendent of Public Instruction for the State of Michigan. The complaint alleged *inter alia* that as a result of actions and inactions on the part of all the named defendants, the Detroit Public School System was racially segregated. The complaint further challenged the constitutionality of Act 48 of the Michigan Public Acts of 1970 insofar as that Act precluded implementation of the April 7, 1970, "plan"



to desegregate the Detroit Public Schools. The plaintiffs further prayed for a preliminary injunction to restrain the enforcement of Act 48 together with an order requiring the Detroit Board of Education to implement the so-called April 7, 1970, desegregation plan.

The district court ruled that plaintiffs were not entitled to preliminary injunctive relief and declined to rule on the constitutionality of Act 48. At that time the district court granted a motion dismissing the action as to the Governor and the Attorney General. (Rulings dated September 3, 1970.) Upon appeal, the United States Court of Appeals for the Sixth Circuit sustained the district court's denial of plaintiffs' motion for a preliminary injunction but reversed the district court in part, holding that portions of Act 48 were unconstitutional and at the same time ordering that the Governor and the Attorney General remain as parties to the litigation. *Bradley v. Milliken*, 433 F.2d 897 (6th Cir. 1970). Although the defendant Detroit Board of Education would have implemented the so-called April 7 desegregation plan upon order of the court or otherwise, the district court did not order implementation of such "plan"; instead as an interim plan, it adopted a plan submitted by the Detroit Board known as the "Magnet Plan." (December 3, 1970, Ruling on School Plans.)

Following a trial on the liability issue, the district court found that the Detroit School District was segregated on the basis of race. The court found that certain conduct on the part of the defendant Detroit Board of Education and the defendant State of Michigan, through its various state officials, fostered segregation in the Detroit Public School System and violated the Fourteenth Amendment rights of Detroit school children. The district court also held that the state was vicariously liable for certain *de jure* acts of the defendant Detroit Board of Education. The district court specifically found that the state failed until 1971 to provide funds for the transportation of pupils within the Detroit School System regardless of their poverty or distance from the school to which they were assigned, although at the same time the state provided financial assistance for student transportation to many neighboring, mostly white suburban districts. The district court finally found that the state,

through Act 48, acted to "impede, delay and minimize racial integration in Detroit schools." 338 F.Supp. 582 at 589.

The district court thereafter ordered the parties to submit plans to desegregate the Detroit Public Schools. Pursuant to this order the defendant Detroit Board of Education submitted two plans, referred to as Plan A and Plan C, that were restricted to the corporate limits of the City of Detroit. At the same time the plaintiffs filed a desegregation plan known as the "Foster Plan" and the State defendants filed a "Metropolitan School District Reorganization Plan." Following the hearings conducted on the Detroit-only plan, the district court concluded that the Detroit Board of Education Plans A and C were legally insufficient because they would not significantly [1104] desegregate the school system: The court found that Plan A was an elaboration and extension of the Magnet Plan then in effect and further found that Plan C as submitted by the Detroit Board was merely a token desegregation effort. The district court also rejected the plan submitted by plaintiffs, specifically finding that plaintiffs' plan would entail a re-casting of the entire Detroit School System and would leave the majority of its schools 75 to 95% black, thus making the Detroit School System more identifiably black. The district court then concluded as a matter of law that "under the evidence in this case [it] is inescapable that relief of segregation in the public schools in the City of Detroit cannot be accomplished within the corporate geographical limits of the city." The Court of Appeals for the Sixth Circuit affirmed the district court's ruling on the issue of segregation and its Findings of Fact and Conclusions of Law on the Detroit-only plan. The court further affirmed in principle the propriety of a metropolitan remedy. Following a grant of *certiorari* to the Court of Appeals, the Supreme Court, on July 25, 1974, affirmed the district court's finding on the liability issue of segregation and did not disturb the court's finding that the Detroit Public Schools could not be adequately desegregated within the corporate limits of the city but reversed the court's approval of a metropolitan remedy, holding that a district court may not impose a multi-district remedy to correct a single school district's acts of *de jure* segregation.



On January 13, 1975, upon receipt of the Supreme Court mandate from the Court of Appeals, this court filed an order requiring the parties to file a current status report. This order precipitated the filing of numerous motions to dismiss by the intervening suburban defendants. Following a pre-trial conference on February 18, 1975, the defendant Detroit Board and the plaintiffs were ordered to submit desegregation plans for Detroit only, on or before April 1, 1975. The State defendants were ordered to submit a critique of the Detroit Board plan by April 20, 1975. On April 16, 1975, the court granted the motions to dismiss filed by the intervening suburban defendants and simultaneously granted plaintiffs' motion to amend their complaint to include allegations of inter-district *de jure* violations.

The plan submitted by the Detroit Board contained many components that were vague or poorly documented. Costs for these components, including transportation, were excessive. The defendant Detroit Board sought to add 3,416 new employees, many at salaries well in excess of those paid to its more experienced and tenured teachers. Moreover, the plan failed to inform the court of the extent to which each of the components might presently exist in the school system. When these deficiencies became apparent, the court deemed it advisable to appoint three court experts and commissioned them as officers of the court to obtain much of the needed information. The court assigned its experts to obtain from the Detroit Board sufficient data to evaluate the components included in the plan. Because the constitutional sufficiency of the defendant Board's plan could be determined only by examining all of the alternatives, the court deemed it necessary to request its experts to explore additional possibilities to aid the court's evaluation of the transportation component. The hearings on both plans commenced on April 29, 1975.

We now detail the findings of fact in order to determine the amount of desegregation possible in this school district, giving due consideration to the practicalities at hand. We are reminded that, according to *Brown v. Board of Education*, 349 U.S. 294, 300, 75 S.Ct. 753, 99 L.Ed. 1083 (1954), this court is to be guided by equitable principles. Thus, its guidelines must be flexible and responsive to public and private needs.

## III. FINDINGS OF FACT

### A. *The Detroit School System*

1. The Detroit School System, which is coterminous with the City of Detroit, [1105] is governed by a Central Board of Education. In an attempt to decentralize this huge school system the Michigan legislature, pursuant to Act 48 of the Michigan Public Acts of 1970 (Mich. Comp. Laws 338.171 *et seq.*) divided the school system into eight geographic "regions". Each region is governed by a regional board of education whose primary responsibilities and relationship with the central Board of Education are outlined in Defendant Board of Education's Exhibit 4, "Guidelines for Decentralization". Each region has a five-member board elected by the citizens residing within its boundaries. The individual board member receiving the highest number of votes is designated chairman of the regional board.

The Central Board of Education consists of 13 members. Five of its members are elected from the City of Detroit at large and the remaining positions are occupied by the eight regional chairmen. The day-to-day administration of the entire school system is the responsibility of a General Superintendent of Schools, an Executive Deputy Superintendent, a Deputy Superintendent and an Assistant Superintendent, together with eight Regional Superintendents selected by the regional boards. The "Guidelines for Decentralization" indicate that there is much autonomy left with the regional boards. For example, the regional boards retain the authority to change attendance boundaries within their regions, transfer teachers from school to school within their regions, vary the educational curriculum in schools within their regions and hire the Regional Superintendents. Under the regional system the quality of education could vary not only among regions but also among schools within a region. Notwithstanding this decentralized system, the Central Board of Education remains responsible for governing the entire system and for overseeing the actions of the regional boards.



2. Both the Central Board and the central administrative staff under the supervision of the General Superintendent are bi-racial in character. Nine of the Central Board's thirteen members, including the Board President, are black; the other four members are white. At the beginning of this remedial hearing the General Superintendent was white and the Executive Deputy Superintendent was black; when these proceedings were completed the white General Superintendent had retired and had been replaced by one who is black. The bi-racial aspects of the school administration extend throughout the entire staff, down to the level of the department heads.

The racial composition of the school administration has changed dramatically since the inception of this lawsuit in 1970. At the conclusion of the trial on the liability aspects of this litigation in 1971, the Central Board was composed of ten white members and three black members and the greater part of the General Superintendent's staff was white. As a result of the decentralization brought about by the passage of Act 48, the black community has become more involved in and has experienced greater control over the Detroit School System.

3. Although the Supreme Court decision in this case was handed down in July of 1974, the Detroit Board of Education did not take steps to formulate a desegregation plan until ordered to do so by this court. In January of 1975, however, they created a desegregation office commissioned to formulate an acceptable plan. The Detroit Board's plan, submitted to this Court on April 1, 1975, was adopted by a 9-4 vote. The nine black members of the Board voted in favor of the desegregation plan while the four white members opposed the plan as presented. Although this vote was split along racial lines, the central Board of Education is nevertheless a cooperative Board and is willing to desegregate the Detroit school system. However, the plan as submitted does not enjoy unanimous acceptance among the members of the Detroit Board, the members of the administrative staff or the members of the desegregation office. It is apparent that under the regional system it is possible [1106] that the degree of desegregation under the Board's plan could vary among different regions and it is likely that the

plan as submitted by the Central Board of Education enjoys varying degrees of acceptance in different regions.

B. *Statistical and Demographic Data*

4. The most recent official racial-ethnic distribution count, taken on September 27, 1974, discloses that there are 257,396 students enrolled in the Detroit Public Schools. Of this number 71.5% are black and 26.4% are white, while 2.1% is comprised of other ethnic groups. In the Detroit School System's regular K-12 program 247,113 students are enrolled, of which 71.4% are black and 28.6% is comprised of white and other ethnic groups. In the elementary schools, grades K-6, 141,806 students are enrolled, of which 72.3% are black and 27.7% is comprised of white and other ethnic groups. In the junior high schools, grades 7-8, 39,600 students are enrolled of which 73.0% are black and 27.0% is comprised of white and other ethnic groups. In the senior high schools, grades 9-12, 65,707 students are enrolled, of which 68.6% are black and 31.4% is comprised of white and other ethnic groups. (See Defendant Board of Education's Exhibit 6, page 4.) The racial composition of each region as of September 27, 1974, is reflected in the table next attached:

ETHNIC COMPOSITION BY REGION

| Region | Total Student Membership | Racial-Ethnic Distribution | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | American Indian | | Asian American | | Black American | | Spanish Surnamed | | White and Others | |
| | | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| 1 | 24907 | 70 | 0.3 | 68 | 0.3 | 22486 | 90.3 | 234 | 0.9 | 2049 | 8.2 |
| 2 | 36972 | 121 | 0.3 | 93 | 0.3 | 22278 | 60.3 | 3450 | 9.3 | 11030 | 29.8 |
| 3 | 33723 | 22 | 0.1 | 50 | 0.1 | 23876 | 70.8 | 220 | 0.7 | 9555 | 28.3 |
| 4 | 36820 | 40 | 0.1 | 181 | 0.5 | 20414 | 55.4 | 145 | 0.4 | 16040 | 43.6 |
| 5 | 31354 | 7 | 0.0 | 16 | 0.1 | 30325 | 96.7 | 17 | 0.1 | 989 | 3.1 |
| 6 | 30796 | 37 | 0.1 | 48 | 0.2 | 19442 | 63.1 | 130 | 0.4 | 11139 | 36.2 |
| 7 | 24605 | 16 | 0.1 | 140 | 0.6 | 11114 | 45.2 | 88 | 0.3 | 13247 | 53.8 |
| 8 | 29725 | 4 | 0.0 | 26 | 0.1 | 28300 | 95.2 | 66 | 0.2 | 1329 | 4.5 |
| City-Wide Schools | 8494 | 15 | 0.1 | 34 | 0.4 | 5883 | 69.3 | 107 | 1.3 | 2455 | 28.9 |
| Total District | 257396 | 332 | 0.1 | 656 | 0.3 | 184118 | 71.5 | 4457 | 1.7 | 67833 | 26.4 |



5. This court previously found that the population of the City of Detroit peaked in 1950 and since that year has been declining steadily at the rate of approximately 169,500 per decade. In 1950 Detroit's population constituted 61% of the total population of the standard metropolitan area; in 1970 it comprised but 36% of that figure. The black population in the City of Detroit has increased markedly from 1.4% of the city population in 1900 to 43.9% in 1970. 338 F.Supp.582 at 585-86. The Detroit Board of Education's demographic expert testified, and we agree, that a current study of Detroit population trends indicates that as of 1975 the population of the City of Detroit is majority black.

6. On September 27, 1971 this court found that the decline in the percentage of white students in the Detroit Public School system during the period 1961-1970 was greater than the percentage decline of the overall white population in the city. At the same time the percentage of black enrollment in the Detroit school system increased at a greater rate than the overall general black population in the city during the same period. In the 1960-1961 school year there were [1107] 285,512 students in the Detroit school system, of which 130,765 (45.8%) were black. In the 1966-1967 school year there were 297,035 students in the system, of which 168,299 (56.7%) were black. In the 1970-1971 school year 289,743 students were enrolled, of which 184,194 (63.6%) were black. During the period between 1968 and 1970 the Detroit school system experienced a larger increase in the percentage of black students than any other major northern school district. The percentage increase in Detroit during that period was 4.7% as contrasted with a high of 3.2% in Boston and a low of 1.1% in Denver among other major northern school districts. (338 F.Supp. 582 at 586.) This court predicted in 1971 that, if present trends continued, the percentage of black students in the Detroit Public Schools would be 72% in the 1975-1976 school year, 80.7% in the 1980-1981 school year and, further, the system would be virtually 100% black by 1992. (338 F.Supp. at 585.) The record compiled during this remedial proceeding demonstrates that the predictions made by the

District Court in 1971 were totally accurate, if not somewhat conservative.[1] During the past five years the black student enrollment has increased at an average of 2% per year, with a corresponding 2% decrease in the white student population during the same five-year period. At the elementary level the school system is presently 72.5% black and the trend toward a 2% annual increase has been positively identified.

7. There are presently 326 schools in the Detroit Public School System: 226 elementary schools, 56 junior high schools, 22 high schools and 22 specialized and primary schools. The system operates on a feeder plan, in which elementary students are assigned to specific junior and senior high schools. The geographic distribution of these schools, which are distributed throughout the city, reflects the Detroit School System's devotion to the neighborhood school concept.

The increasing black student enrollment in the Detroit Public Schools System, which is evident even in schools located at the city's boundaries, is demonstrated by the following tables reflecting significant increases in black student enrollment since 1969:

TABLE I

RACIAL DEMOGRAPHIC SHIFT 1969-1974
OF SELECTED SCHOOLS — DETROIT EASTSIDE

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| CARSTENS | 37.4 | 48.0 | 62.3 | 73.2 | 82.6 | 88.3 |
| GUYTON | 17.2 | 30.6 | 49.5 | 64.1 | 73.9 | 77.9 |
| HAMILTON | 63.6 | 70.8 | 71.8 | 74.2 | 79.8 | 83.4 |
| HOSMER | 8.2 | 18.1 | 28.2 | 44.8 | 57.8 | 70.0 |
| IVES | 6.2 | 13.0 | 19.1 | 37.9 | 54.0 | 64.2 |
| LINGEMANN | 53.1 | 60.2 | 62.6 | 65.8 | 68.9 | 72.3 |
| JACKSON J. H. | 39.8 | 43.3 | 54.2 | 71.9 | 85.1 | 92.0 |
| ROBINSON M. S. | — | — | 69.1 | 84.8 | 88.7 | 92.6 |

1.
The District Court in 1971 predicted that in the 1975-1976 school year the black student enrollment would total 72 percent. The evidence taken during this remedial proceeding indicates that that figure was low. Black enrollment in the elementary schools exceeded 72% on September 27, 1974, and black enrollment system-wide on that date was 71.5%.



[1108]

TABLE II

RACIAL DEMOGRAPHIC SHIFT 1969-1974
OF SELECTED SCHOOLS — NORTHEAST DETROIT

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| COOPER | 59.0 | 72.1 | 79.6 | 85.7 | 86.9 | 90.3 |
| A. L. HOLMES | 86.6 | 93.2 | 95.3 | 96.3 | 97.8 | 98.5 |
| CLEVELAND J. H. | 68.8 | 71.6 | 74.9 | 74.3 | 75.9 | 79.4 |
| GREUSEL J. H. | 69.5 | 73.6 | 75.9 | 78.5 | 82.2 | 81.4 |

TABLE III

RACIAL DEMOGRAPHIC SHIFT 1969-1974
ALONG WOODWARD AVENUE*

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| HAMPTON | 68.8 | 75.1 | 60.7 | 70.6 | 75.3 | 81.5 |

*Woodward Avenue is a major thoroughfare in Detroit, which divides the city along east-west lines.

TABLE IV

RACIAL DEMOGRAPHIC SHIFT 1969-1974
OF SELECTED SCHOOLS ON DETROIT'S NORTH SIDE
(BORDERING EIGHT MILE ROAD)

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| BOW | 13.6 | 17.8 | 27.9 | 44.7 | 57.4 | 68.6 |
| GREENFIELD PK. | 32.3 | 38.2 | 41.1 | 46.2 | 50.7 | 54.0 |
| MARSHALL | 57.3 | 65.0 | 69.3 | 75.1 | 81.7 | 84.6 |
| MASON | 48.6 | 52.7 | 61.6 | 69.7 | 77.2 | 83.5 |
| WINSHIP | 50 1 | 70.4 | 89.8 | 93.3 | 96.2 | 97.7 |
| CLEVELAND J. H. | 68.8 | 71.6 | 74.9 | 74.3 | 75.9 | 79.4 |
| FARWELL J. H. | 63.3 | 67.8 | 68.4 | 68.0 | 73.9 | 82.4 |
| GRANT J. H.* | *21.7 | *26.2 | *27.8 | *29.7 | *38.1 | *41.4 |
| HAMPTON J. H. | *68.8 | *75.1 | 95.5 | 97.1 | 98.1 | 98.8 |
| PERSHING H. S. | 57.7 | 63.8 | 73.1 | 81.0 | 83.4 | 85.6 |

*Elementary School Figures.

[1109]

TABLE V

RACIAL DEMOGRAPHIC SHIFT 1969-1974
OF SELECTED SCHOOLS IN NORTHWEST-WEST AREA
OF DETROIT

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| BURNS | 31.4 | 59.8 | 80.0 | 90.0 | 94.5 | 97.1 |
| CADILLAC | 17.6 | 39.1 | 73.5 | 75.3 | 90.9 | 94.4 |
| CRARY | 4.5 | 20.6 | 40.9 | 61.9 | 83.0 | 89.1 |
| DOSSIN | 6.0 | 5.0 | 16.8 | 34.2 | 64.0 | 80.8 |
| FORD | 34.2 | 35.4 | 51.8 | 70.0 | 84.3 | 89.6 |
| HERMAN | 55.6 | 58.5 | 66.4 | 73.9 | 79.3 | 85.8 |
| McFARLANE | 77.6 | 82.0 | 89.9 | 93.9 | 95.7 | 96.5 |
| NEWTON | 14.5 | 21.8 | 27.8 | 45.1 | 66.9 | 76.9 |
| PARKER | 82.7 | 79.4 | 88.1 | 95.1 | 97.0 | 97.6 |
| PARKMAN | 7.8 | 12.8 | 29.9 | 47.8 | 68.4 | 78.3 |
| COOLEY H. S. | 58.9 | 76.3 | 94.0 | 97.4 | 99.3 | 99.6 |

TABLE VI

RACIAL DEMOGRAPHIC SHIFT 1969-1974
OF SELECTED SCHOOLS IN DETROIT'S SOUTHWEST AREA

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| CRAFT | 88.4 | 86.8 | 84.3 | 92.1 | 91.7 | 91.3 |
| ELLIS | 66.9 | 71.6 | 74.0 | 72.5 | 77.0 | 83.8 |
| OWEN | 69.5 | 70.8 | 68.7 | 67.4 | 71.5 | 79.5 |

Shifting demographic patterns in Detroit are reflected not only in schools that are 70% or more black, but also in those schools that, though not yet majority black, will be so within a short period:

TABLE VII

RACIAL DEMOGRAPHIC SHIFTS 1969-1974
IN SELECTED SCHOOLS ON DETROIT'S NORTHWEST
AND WEST SIDES

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| EMERSON | 3.6 | 3.6 | 3.0 | 8.5 | 27.7 | 40.9 |
| McKENNY | 5.1 | 5.7 | 10.3 | 22.2 | 38.4 | 46.4 |
| COOLIDGE | 1.3 | 2.1 | 5.1 | 13.8 | 30.1 | 45.6 |

[1110]

TABLE VIII

RACIAL DEMOGRAPHIC SHIFTS 1969-1974
IN SELECTED SCHOOLS IN NORTHEAST DETROIT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| GRANT | 21.7 | 26.2 | 27.8 | 29.7 | 38.1 | 41.4 |
| LYNCH | 10.4 | 6.7 | 12.8 | 18.0 | 30.9 | 47.8 |

Based on present trends, it is accurate to expect that the black enrollment of several schools on Detroit's northwest and east sides will be in excess of 70% black by the 1975-1976 school year:

TABLE IX

RACIAL DEMOGRAPHIC SHIFTS 1969-1974

PERCENTAGE BLACK ENROLLMENT

| | Year | | | | | |
|---|---|---|---|---|---|---|
| School | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| BOW | 13.6 | 17.8 | 27.9 | 44.7 | 57.4 | 68.6 |
| COFFEY | — | 29.0 | 33.2 | 43.6 | 51.8 | 68.8 |
| EDISON | 0.3 | 2.7 | 9.3 | 25.3 | 49.5 | 65.3 |
| HOSMER | 8.2 | 18.1 | 28.2 | 44.8 | 59.8 | 70.0 |

The Ford High School, whose attendance zone abuts Detroit's border, is located on Detroit's extreme northwest side. As indicated by the following table, Ford, presently 55% black, will in all likelihood be 60% black by the 1975-1976 school year if demographic trends continue:

TABLE X

RACIAL DEMOGRAPHIC SHIFT 1969-1974 IN
FORD HIGH SCHOOL

PERCENTAGE BLACK ENROLLMENT

| Year | | | | | |
|---|---|---|---|---|---|
| 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| 13.4 | 20.0 | 30.5 | 40.3 | 48.2 | 54.6 |

[1111] Based on current trends, the following schools, which have student population between 25% and 35% black, can expect to have substantial increases in black enrollment:

TABLE XI

RACIAL DEMOGRAPHIC SHIFTS 1969-1974

PERCENTAGE BLACK ENROLLMENT

| School | Year | | | | | |
|---|---|---|---|---|---|---|
| | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
| GOODALE | 0.1 | 0.7 | 1.5 | 4.0 | 14.9 | 25.2 |
| MACOMB | 1.6 | 2.8 | 4.9 | 8.1 | 21.0 | 30.6 |
| EMERSON J. H. | *3.6 | *3.6 | *3.0 | 8.4 | 19.9 | 30.6 |
| MURPHY J. H. | 6.5 | 9.8 | 12.7 | 6.3 | 20.1 | 30.3 |
| TAFT J. H. | 0.3 | 0.7 | 2.4 | 12.8 | 21.0 | 34.5 |

*Elementary School Figures.

8. These tables clearly demonstrate the City of Detroit's changing demography and conclusively reflect significant increases in black student enrollment since 1969. The tables point out that schools that were as low as 4.5% black in 1969 had increased to as much as 89.1% black by 1974. The demographic patterns in Detroit reflect a large number of schools that are 70% or more black and it is apparent that many schools that are not yet majority black will become majority black within a short period of time. For example, Table VII above contains a sampling of schools located on the northwest side of Detroit that will experience a majority black school population within the coming school year. Similarly, schools located in the northeast section of Detroit that are presently 40-50% black will be majority black within the coming school year. If present demographic trends continue, schools that now have student enrollment ranging between 20 and 40% black can expect to have substantial increases in black enrollment. Although the Detroit school system as a whole is experiencing a 2% annual increase in black enrollment, the following table demonstrates that individual schools in many areas undergoing racial demographic shifts have experienced increases in black enrollment that are as high as 16.9%. These shifting demographic patterns are rapidly changing Detroit's residential patterns; mixed residential areas may now be found in all parts of the city, including areas bordering the suburbs.



AVERAGE YEARLY PERCENTAGE
RACIAL CHANGE IN SELECTED SCHOOLS
BETWEEN 1969-1974

PERCENTAGE BLACK ENROLLMENT

| School | 1969 | 1974 | Average Yearly % Change |
|---|---|---|---|
| Emerson | 3.6 | 30.6 | 5.4 |
| Marshall | 57.3 | 84.6 | 5.5 |
| Kennedy | 64.6 | 93.1 | 5.7 |
| Herman | 55.6 | 85.8 | 6.0 |
| Cooper | 59.0 | 90.3 | 6.3 |
| Van Zile | 46.9 | 79.7 | 6.6 |
| Parker | 62.7 | 97.6 | 7.0 |
| Mason | 48.6 | 83.5 | 7.0 |
| Lynch | 10.4 | 47.8 | 7.5 |
| McKenny | 5.1 | 46.4 | 8.3 |
| Coolidge | 1.3 | 45.6 | 8.9 |
| Cerveny | 51.5 | 97.5 | 9.2 |
| Winship | 50.1 | 97.7 | 9.5 |
| Carstens | 37.4 | 88.3 | 10.2 |
| Bow | 13.6 | 68.6 | 11.0 |
| Ford | 34.2 | 89.6 | 11.1 |
| Ives | 6.2 | 64.2 | 11.6 |
| Hosmer | 8.2 | 70.0 | 12.4 |
| Newton | 14.5 | 76.9 | 12.5 |
| Edison | 0.3 | 65.3 | 13.0 |
| Burns | 31.4 | 97.1 | 13.1 |
| Guyton | 17.2 | 77.9 | 12.1 |
| Parkman | 7.8 | 78.3 | 14.1 |
| Dossin | 6.0 | 80.8 | 15.0 |
| Cadillac | 17.6 | 94.4 | 15.4 |
| Crary | 4.5 | 89.1 | 16.9 |

9. The Board began to undertake steps to desegregate as early as 1970 and [1112] was precluded from doing so only by the passage of Act 48 of the Michigan Public Acts of 1970 (Mich. Comp. Laws § 388.171) by the Michigan Legislature. The Board has followed the policy of transporting students to relieve overcrowding in such a manner as to promote desegregation. In the 1974-1975 school year the Detroit Board was able to increase the percentage of black students in many schools that previously were nearly all-white. The table next annexed demonstrates the dramatic increases in black student enrollment at various schools accomplished by such transportation:

PERCENTAGE BLACK ENROLLMENT IN SCHOOLS
RECEIVING STUDENTS TO RELIEVE OVERCROWDING

1974

| School | Without Transportation | With Transportation |
|---|---|---|
| Northwest Area | | |
| Ann Arbor Trail* | 2 | 39 |
| Burgess | 4 | 21 |
| Carver* | 0 | 18 |
| Dow* | 32 | 43 |
| Harding | 18 | 22 |
| Healy* | 0 | 18 |
| Houghton* | 4 | 12 |
| Leslie | 0 | 32 |
| Lodge* | 0 | 27 |
| Mann | 14 | 25 |
| Weatherby | 3 | 16 |
| Yost* | 0 | 42 |
| Northeast Area | | |
| Burbank* | 0 | 16 |
| Hanstein* | 0 | 23 |
| Marquette* | 6 | 12 |
| McGregor* | 0 | 34 |
| Pulaski* | 2 | 14 |
| Robinson | 9 | 9 |
| Trix* | 0 | 24 |
| Wilkins | 6 | 16 |

*Schools that abut the Detroit city limits.

*C. Plaintiffs' Plan*

10. The plantiffs' desegregation plan, submitted on April 1, 1975 pursuant to an order of this court and revised on April 30, 1975, was designed by Dr. Gordon Foster, Director of the University of Miami Title IV Desegregation Center. The plan as devised by Dr. Foster deals solely with pupil reassignment. The rationale and the ultimate goal of the plan are that, as far as possible, every school within the district must reflect the racial ratio of the school district as a whole within the limits of 15 percentage points in either direction. Dr. Foster admitted that the 15% figure was arrived at arbitrarily. Under Dr. Foster's definition any school whose racial composition varies more than 15% in either direction from the Detroit system-wide ratio is racially identifiable. Accordingly, an elementary school with 57.3%-87.3% black enrollment, a junior high school with



58.0%-88.0% black enrollment and a senior high school with 51.9%-81.9% black enrollment are desegregated schools. Carrying Dr. Foster's plan a step further, an elementary school that is 56% black is a racially identifiable white school and an elementary school that is 85% black is a desegregated non-racially identifiable school. (Plaintiffs' plan, page 7A.)

11. In developing plaintiffs' plan, Dr. Foster testified he explored the extent to which desegregation could be effected by each of the following commonly accepted techniques: redrawing zone lines between contiguous zones of differing racial composition, pairing schools within these zones, pairing non-contiguous zones, changing feeder patterns in affected schools, examining various building utilization techniques, use of temporary space and changing grade structures in particular buildings. Dr. Foster examined these alternatives in an effort to achieve his desired racial mix. Thereafter, he subdivided the system into five clusters with similar racial compositions, each comprised of a group of high school constellations. (Plaintiffs' plan pages 3A, 4A.) Dr. Foster proceeded to alter the grade structures at particular schools within each cluster and schools within the clusters were then paired. The pairing of schools was accomplished by selection of all the "racially identifiable" white schools and the "racially identifiable" black schools in order of size and percentage of children by race. Thereafter, children in the newly created pairings were exchanged to achieve ratios conforming to Dr. Foster's definition of a desegregated school. The plan also created new feeder patterns for [1113] junior and senior high schools that ultimately achieve a racial mix falling within the same parameters.

Plaintiffs' pupil reassignment plan does not include kindergarten and pre-kindergarten children; provision has been made for them to attend the school nearest their home, which in many instances necessitates changes in facility utilization. Under the plaintiffs' plan present high school juniors, although included in the pupil assignment process, are given the option of remaining at their present school and

graduating there, assuming that to do so would not cause or maintain segregation. (Plaintiffs' plan page 5A.)

12. Under the plaintiffs' plan, not only are many students reassigned to elementary schools outside of their neighborhood for half of their elementary years but, as a result of the pairings and changes in feeder patterns into junior and senior high schools, many students will attend a school out of their home neighborhood for between eight and eleven years. See, *e.g.*, plaintiffs' plan for Webster, Birney, Peck, Amos, Beard, Larned, Higginbotham, Glazier and McGregor schools. Under plaintiffs' plan only the racial ratio that could be achieved by a particular pairing was considered in the selection of schools for the pairings. Consequently, the plaintiffs' plan creates many problems relating to building capacity. For example, proposed enrollment exceeds school capacity at 18 junior high schools.[2] In addition, some elementary school pairings under the plan would result in over-enrollment. While plaintiffs' plan attempts to minimize problems of capacity by creating "swing grades" with the variable assignments of the 6th, 7th and 9th grades, this technique results in undue disruption of grade structures. At the senior high school level, the plaintiffs' plan has avoided problems of capacity by assuming a dropout correction factor of .7069 for blacks and .9426 for whites and others. (Plaintiffs' plan, page 6A.) As a result, there would be 13,865 fewer blacks and 1,145 fewer whites in the three senior high grades than in the three junior high grades. However, no evidence was presented that justifies reliance upon such a dropout factor; consequently, capacity problems may be created by plaintiffs' plan at the senior high school level as well. Reliance upon a 30% dropout rate for black students at the senior high school level would disrupt the entire school system if the projected number of dropouts did not materialize. Moreover, even if such a statistic were supported by credible evidence, plaintiffs have not allowed for the possibility that the dropout rate would decline in a desegregated system.

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2. In addition, under plaintiffs' plan, the Columbus Junior High School would be over capacity were it not for the utilization of temporary spaces.



13. We find that a large number of schools are paired solely to achieve a desired racial ratio in each of the paired schools. (Tr. Vol. 18, p. 45.) The arbitrary pairings devised in plaintiffs' plan necessitate the transportation of thousands of black school children many miles to schools that still remain 80% or more black. The following table demonstrates that various schools were included in plaintiffs' plan despite the fact that only insignificant changes occurred in their racial composition:

| Plan Page | SCHOOL | 1974 | PROPOSED |
|---|---|---|---|
| 1 | McCulloch | 99.7 | 89.8 |
| 14 | Ilene | 99.5 | 89.2 |
| 14 | King | 99.2 | 88.9 |
| 29 | Duffield | 99.2 | 88.4 |
| 8 | Columbian | 99.6 | 88.2 |
| 8 | Columbian Primary | 100.0 | 87.3 |
| 27 | Bell | 99.7 | 87.3 |
| 25 | Marxhausen Primary | 98.8 | 86.8 |
| 12 | Ruthruff | 99.2 | 86.5 |
| 5 | Angel Primary | 98.8 | 86.4 |
| 1 | Joffe Primary | 100.0 | 86.3 |
| 2 | Sampson | 99.7 | 86.1 |
| 27 | Berry | 99.8 | 85.8 |
| 13 | Guest Primary | 97.5 | 85.7 |
| 11 | Noble | 98.8 | 85.5 |
| 12 | Herman | 85.8 | 85.4 |
| 25 | Campbell | 100.0 | 85.3 |
| 30 | Bunche | 100.0 | 85.0 |
| 11 | Sherrill | 99.9 | 84.7 |
| 9 | Parker | 97.6 | 84.6 |
| 11 | Courtis | 99.6 | 84.6 |
| 24 | Marshall | 84.6 | 84.4 |
| 11 | Barton | 100.0 | 84.2 |
| 32 | Tendler | 95.3 | 83.6 |
| 30 | Lingemann | 72.3 | 83.4 |
| [1114] | | | |
| 8 | Ellis | 83.8 | 83.0 |
| 15 | Higginbotham | 100.0 | 82.7 |
| 27 | Keith Primary | 99.6 | 82.6 |
| 30 | Bellevue | 96.7 | 82.1 |
| 28 | Krolik | 100.0 | 81.8 |
| 12 | Alger | 100.0 | 81.6 |
| 11 | McFarlane | 96.5 | 81.4 |
| 13 | Cadillac | 94.4 | 81.0 |
| 1 | Woodward | 99.9 | 81.0 |
| 4 | Chaney | 98.3 | 80.7 |
| 1 | Roosevelt | 99.9 | 80.7 |
| 9 | Monnier | 97.0 | 80.4 |
| 4 | Goldberg | 98.9 | 80.4 |
| 14 | Dossin | 80.8 | 80.8 |
| 2 | Turner | 99.4 | 80.1 |
| 4 | Owen | 79.5 | 80.0 |

It is apparent that, for example, plaintiffs' selection of the Lingemann School was made solely because white students were needed for transfer to the Bunche School to accomplish plaintiffs' desired balance. Presently, the Lingemann School is 72.3% black and thus is a desegregated school by plaintiffs' definition. After application of plaintiffs' plan Lingemann School becomes 83.4% black. Lingemann was included in plaintiffs' plan irrespective of the fact that it is located in a naturally integrated neighborhood that has attained a measure of racial stability. The plaintiffs' plan groups the Craft, Ellis, Glazier and McKinstry Schools and transports 753 students; as a result, the Ellis School is reduced from 83.8% to 83.0% black. In the Carrie, Morley and Peck School grouping, the Carrie School is presently 58% black and thus not racially identifiable according to plaintiffs' definition. After transporting children, Carrie is reduced to 54.1% black; black students are bussed out of Carrie solely to be added to the black population at Morley.

In addition, after transporting thousands of students, there are a number of schools that are under or barely exceed the acceptable minimum percentage of black enrollment set by Dr. Foster. The following table demonstrates the racial mix achieved at selected schools:

| Plan Page | SCHOOL | % Black |
|---|---|---|
| 5 | Amos | 50.7 |
| 10 | Carver | 52.0 |
| 21 | Richard | 52.4 |
| 16 | Cooke | 52.5 |
| 13 | Houghton | 53.4 |
| 6 | Higgins | 54.1 |
| 7 | Cary | 54.1 |
| 22 | Trix | 54.9 |
| 31 | Burbank | 55.1 |
| 31 | McGregor | 55.4 |
| 6 | Bennett | 55.8 |
| 1 | Webster | 56.1 |
| 17 | Larned | 56.1 |
| 19 | Burt | 57.1 |
| 13 | Yost | 57.4 |
| 23 | Grayling | 57.4 |
| 6 | Harms | 57.6 |
| 20 | Law | 58.1 |
| 10 | McColl | 58.5 |
| 10 | Maybee | 58.5 |
| 23 | Greenfield Union | 58.6 |



| Plan Page | SCHOOL | % Black |
|---|---|---|
| 9 | Everett | 58.6 |
| 23 | White | 56.3 |
| 27 | Clark | 59.0 |
| 3 | Burton | 59.4 |
| 19 | Holcomb | 59.5 |
| 22 | Fleming | 59.5 |
| 13 | Edison | 59.9 |
| 3 | Beard | 60.0 |

Groupings of schools with comparable racial ratios remain even after the application of Plaintiffs' plan. Schools containing enrollment over 80% black are grouped in a contiguous area and follow a consistent pattern. Similarly, schools with enrollment under 60% black are grouped in contiguous areas and follow an easily discernible pattern. (See Defendant Board of Education's Exhibit 10.)

14. The plaintiffs' reassignment plan requires the transportation of 77,303 children, of which 48,312 are elementary school children and 28,991 are junior high school children. Deducting 5,954 children presently being transported, plaintiffs have arrived at a total of 71,349 students requiring transportation under their plan as proposed.[3] Thereafter, plaintiffs use a factor of four daily round trips per bus with 66 pupils per bus and estimate that 271 additional busses would be required to effectuate their reassignment plan. (Plaintiffs' plan p. 7A.) There is no credible evidence [1115] to support plaintiffs' assumption that every bus could be utilized to make four round trip runs. The plaintiffs' estimate of 271 buses is further dependent upon the unrealistic assumption of utilizing one pick-up point for 66 school children without consideration of the distances students would have to walk to arrive at the pick-up point. Moreover, their estimate does not consider the ethnic composition of any area surrounding a pick-up point.

Plaintiffs' present estimate of 77,303 students is not far below their 1972 estimate of 82,000 children requiring

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3. We have arrived at varying estimates that range 77,000 and 81,000 students requiring transportation under plaintiffs' plan.

transportation. The most credible estimate of the number of buses required for plaintiffs' 1972 plan was 900. Expert testimony given in 1972 estimated that a school district could transport an average of 100 students for each bus in service. (Witness Kuthy, Tr. pages 122-124, book 2; March 15, 1972.) Based upon this testimony, which was not challenged by plaintiffs, plaintiffs' plan would require the procurement of approximately 840 buses, including sufficient spares.

Accordingly, we find that the plaintiffs' plan involves the transportation of thousands of students, the great majority of whom would be transported from one predominantly black school to another predominantly black school, involves bus runs within the city of Detroit of up to thirty-eight minutes without taking account of time for loading and unloading and would result in many children spending between nine and eleven years in schools as far as five to twelve miles from their neighborhood.

15. The plaintiffs' plan, based upon a definition of racial identifiability as beyond a range of 15% from the system-wide racial mix, is rigidly structured. The plan does not consider the past or present demography of the Detroit school district, more particularly ignoring population shifts that have been occurring over the past decade. Moreover, the plan does not consider the possibility of resegregation in the City of Detroit. Although Dr. Foster testified that his plan purports to avoid the possibility of resegregation, this testimony is premised upon the assumption that after application of the plan there would be "no pockets where people can go." (Tr. Vol. 19, page 166.) There is no credible evidence in this record to justify the assumption that adoption of plaintiffs' plan would lessen the chance of resegregation within or without the city; Dr. Foster's testimony fails to take account of the developed suburban areas that circumscribe the city. Accordingly we find that the plaintiffs' plan does not include provisions for promoting racial stability and avoiding resegregation. We re-affirm the prior finding of this court that:

> "It would be a natural, forseeable and probable consequence of the implementation of the Plaintiffs' plan that the trend of the Detroit schools towards a higher percentage of black students and a lower percentage of white students will be sharply accelerated." (Tr. March 14, 1972, pages 584-586.)



D. *Detroit Board of Education Plan*

16. The Detroit Board of Education submitted a plan that provided for transportation of approximately 51,000 students. Interwoven into the Board's plan is the provision for magnet schools at both the middle school and senior high school levels to aid in attaining maximum desegregation. The goals of the Board's plan include establishing maximum effective desegregation, removing racially identifiable white schools and promoting interracial understanding and respect in a diversified school district. The Detroit Board plan takes into consideration the demography of the Detroit School District and recognizes that the Detroit School System is now 71.5% black system-wide (72.3% black at the elementary school level). The Board plan acknowledges that since 1969, the school district population has declined from 293,859 to 257,396, which represents a loss of 36,463 students or a 12% [1116] decline. During this five-year period, the black school population has increased by 3500 students and over 40,000 white students have left the system. Accordingly, only 67,833 white students are presently enrolled in the Detroit School System as compared with 189,563 black students.

Under the Board plan, the Detroit School System continues to operate on a feeder pattern. The pairings have been devised to provide that every child will spend at least a portion of his education in either a neighborhood elementary school or a neighborhood junior and senior high school. Although regional lines are crossed in a few instances the plan generally respects regional boundary lines, which were brought about by the State's attempt to decentralize the school system.

17. Like the plaintiffs' plan, the Board plan explores each of the commonly accepted techniques for desegregation. Like the plaintiffs' plan, the Board plan revamps grade structures at the elementary level by providing that some will accommodate K through 3 and others K plus 4 through 6 and thereafter pairs various schools, providing transportation between the schools so paired. Through this process of pairing and clustering schools, the Board plan attempts to eliminate racially identifiable white elementary schools in Regions 2, 3, 4, 6 and 7. The reassignment plan desegregates the junior and senior high schools by changing the feeder patterns into the junior and senior high schools, but at the same time the plan attempts to respect the concept of high school constellations made up of neighborhood elementary schools and neighborhood junior high schools feeding into an area high school. Under the feeder plan realignment the senior high schools will be desegregated by September, 1976. Eight senior high schools will remain unaffected by the plan.

The Board plan attempts to achieve a 40%-60% black racial mix in the presently white identifiable schools. Although the Board purports not to strive for fixed racial quotas, we find that it in fact does so. In developing its plan the Board sought to determine the racial ratio that provided maximum desegregation while preserving racial stability. The Board concluded that a racial mixture between 40% and 60% black provided a healthy and stable racial mix. The Board's statistical data demonstrates that where elementary schools in a high school constellation range from 75% to 95% black, the high school generally is 95% to 100% black: White students simply leave the system by the time they reach high school. Similarly, the statistical data establish that a racial mixture that does not exceed 60% black provides a degree of stability. Some of the pairings selected by the Board plan, particularly in Region 2, fall below the goal set by the Board only because of the high percentage of Spanish-speaking students in these schools, which ranges as high as 20% in some instances. To accommodate this factor the Board permitted the percentage of black students to fall below their target for racial mix.



18. The Detroit Board's pupil reassignment plan does not affect the schools in Regions 1, 5 and 8; each of these three regions will remain over 90% black. The basic premise of the defendant Board's plan is to eliminate all of the schools with black enrollment below 25% and bring them to the level of 40-60% black. These schools are located largely on the outer fringes of the city. The plan leaves untouched 95 schools, most of which are between 95-100% black and are located within the inner city.[4] Under the defendant Board's plan many [1117] schools will operate over capacity, while some schools in the inner city will have substantial capacity available. The Board decided to leave 95 schools untouched principally because the Board found it impractical to desegregate the student bodies of these schools "without undue hardship of long distance travel." The Board's plan acknowledges that there are too many black students in the system to provide all of them with a desegregated experience while at the same time maintaining stability.

19. The pupil transportation portion of the Detroit Board plan anticipates the daily transportation of approximately 51,000 children between paired schools. The evidence suggests the need for a fleet of busses ranging between 335 and 425 66-passenger vehicles. The defendant Board has suggested that each bus would make two or three runs per day. (Defendant Board's Exhibit 28.) However, as indicated above with respect to the plaintiffs' plan, credible evidence has not been presented by either party to aid the court in making an accurate determination of the number of busses needed to transport this vast number of children. The Detroit Board lacks the experience needed to manage a transportation fleet and does not have available the appropriate data needed to devise an efficient transportation

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4. In addition to the 95 schools untouched by the pupil reassignment portion of the Board's plan, 16 schools that are already desegregated according to the plaintiffs' definition are untouched, 6 elementary schools are not paired but are included in desegregated feeder patterns and 6 schools are taken out of service.

system. This court found it necessary to instruct the Detroit Board to produce a sufficient data base to permit a computer print-out of a grid showing the exact racial composition of the student population in any particular area. Such data are necessary to develop an efficient transportation scheme. Moreover, when such data are available there will be no justification for transporting children into an area without consideration of the ethnic composition of that area.

Transportation under the defendant Board's plan involves much shorter distances than the plaintiffs' plan. School pairings were made to allow transportation routes along major thoroughfares.

20. In addition to reassigning pupils between paired schools the Detroit Board's plan includes a provision to continue certain magnet schools. Pursuant to an order of this court on December 3, 1970, each of the eight regions created a magnet school, relying upon voluntary attendance. Although these magnet schools did not reach the racial mix sought by either the plaintiffs or the defendant Board, they did serve to provide some degree of desegregation.

The Board plan also provides for the creation of four vocational high schools, specializing in medical science, transportation, construction and the commercial arts. These four vocational schools will operate under an enrollment controlled to simulate the system-wide racial composition. In addition, the Board's plan creates two technical high schools with enrollment open to students throughout the entire school system and creates city-wide high schools with specialized curricula. The enrollment of these schools will be controlled to conform to the system-wide racial ratio. The vocational, technical and city-wide schools are designed as magnet schools to attract students from throughout the school system as a means of further desegregating the school system.

The Board plan further suggests that four co-curricular programs be implemented on a city-wide basis in order to



provide additional children with a desegregated school experience. These programs would include music education, art, physical education and athletics. (Board plan page 30.)

Finally, the Board plan suggests the creation of cultural junior high school consortia designed to provide students from substantially black majority schools with an opportunity to spend part of their academic week with white students from other schools in various cultural centers in the greater Detroit area. The Board proposes that these classes be held at the Art Institute, the Detroit Public Library, the Merrill Palmer Institute, [1118] Wayne State University, Shaw College and Lewis Business School.

E. *Educational Components*

21. In addition to the vocational and career education and the junior high consortium the plan submitted by the Detroit Board includes the following educational components:

a. In-Service Training
b. Guidance and Counselling
c. School-Community Relations
d. Parental Involvement
e. Student Rights and Responsibilities
f. Testing
g. Accountability
h. Curriculum Design
i. Bilingual Education
j. Multi-Ethnic Curriculum
k. Co-curricular Activities

The plan as submitted by the Detroit Board does not distinguish between those components that are necessary to the successful implementation of a desegregation plan and those that are not. Moreover, the defendant Board's plan does not inform the court of the extent to which any of these components may currently be in effect in the Detroit public school system; nor did the Board, either through its plan or

through expert witnesses, provide the court with information adequate to permit the court to evaluate the budgetary requests made for each of the components. Accordingly, the court found it necessary to obtain a report from Dr. Louis Monacel outlining the extent to which any or all of these components currently exist in the Detroit School System. (See "Comparison of Existing Personnel, Programs, and Activities with the Personnel, Programs and Activities Required in the Detroit Public Schools Desegregation Plan.") The court also found it necessary to seek an evaluation of each of these components from Dr. Michael Stolee, one of the plaintiffs' expert witnesses. Finally, the court found it necessary to obtain additional information from its court-appointed experts to permit a proper evaluation of each of the components proposed in the Board plan.

22. We find that the majority of the educational components included in the Detroit Board plan are essential for a school district undergoing desegregation. While it is true that the delivery of quality desegregated educational services is the obligation of the school board, nevertheless this court deems it essential to mandate educational components where they are needed to remedy effects of past segregation, to assure a successful desegregative effort and to minimize the possibility of resegregation. In a segregated setting many techniques deny equal protection to black students, such as discriminatory testing, discriminatory counseling and discriminatory application of student discipline. In a system undergoing desegregation, teachers will require orientation and training for desegregation. Parents need to be more closely involved with the school system and properly structured programs must be devised for improving the relationship between the school and the community. We agree with the State Defendants[5] that the following components deserve special emphasis: (1) In-Service Training; (2) Guidance and Counselling; (3) Student Rights and

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5. See State Critique of Detroit Board's Desegregation Plan, page 39.



Responsibilities (see this court's order, June 13, 1975); (4) School-Community Relations-Liaison; (5) Parental Involvement; (6) Curriculum Design; (7) Multi-Ethnic Curriculum; and, (8) Co-curricular Activities. Additionally, we find that a testing program, vocational education and comprehensive reading programs are essential. We find that a comprehensive reading instruction program together with appropriate remedial reading classes are essential to a successful desegregative effort. Intensified reading instruction is [1119] basic to an educational system's obligation to every child in the school community (Tr. Vol. 19 pp. 40-41; Vol. 22, p. 47). Finally, the court finds that an effective court-oriented monitoring program is necessary for effective implementation of a desegregation plan to assure that delivery of educational services will not be made in a discriminatory manner.

F. *School Financing*

23. The Detroit School District receives operating funds by levying a property tax, a portion of which is voted by the electors of the school district and a portion of which is allocated by the Wayne County Tax Allocation Board from the 15 mills constitutionally authorized to be levied without a vote of the electorate. The school district cannot levy additional millage without a favorable vote of the electorate. The Detroit School District presently levies 22.51 mills for operating purposes and 2.25 mills to finance a prior $68 million deficit (pursuant to Public Acts 1 and 2 of 1973), a total of 24.76 mills. This tax effort produces approximately 38% of the school district's total budget. State aid comprises 47% of the total budget. The State aid formula is based upon the number of students in the school district and upon the State Equalized Valuation (SEV) of property in the district. Additional state aid is provided by special grants in the form of entitlement and competitive funds. Federal funds provide the remaining 15% of the budget. (Tr. Vol. 7, pp. 87-95; Vol. 25, pp. 106-107.)

24. The State School Aid Act contains a formula designed to equalize revenues among school districts to the extent that disparities are the result of differences in SEV per pupil among districts. Over the preceding five-year period Detroit's State Equalized Valuation (SEV) has remained relatively static while the SEV in the remainder of the state generally increased. This trend can be explained by the movement of industry, commercial institutions and people to the suburbs and the huge amounts of land used for expressways in Detroit, which remove the property from the city's tax rolls.

Because the per capita State Equalized Valuation in Detroit is 50% lower than the average for the 20 largest cities in Michigan, the school district must levy additional millage to obtain a yield equal to that of the other cities. (Tr. Vol. VII, p. 108, Defendant Board's Exhibit 31.) Because of legislation directed specifically to the Detroit School District, it is required to operate on a balanced budget and must file monthly reports with the State Auditor General. See Mich. Comp. Laws Sections 388.1238-1240.

25. The total of all municipal taxes paid by Detroit citizens translates into a municipal millage equivalent of 84.83 mills. This is the highest tax burden in the state and is 55% higher than the state average. Only 16 cities in the State of Michigan levy an income tax; among them, Detroit's rate is the highest. However, Detroit's per capita income tax yield is substantially lower than the other 15 cities. Moreover, county taxes paid by Detroit citizens are 14.4% higher than the state average, and Detroit municipal taxes are 14.6% higher than the state average.

Detroit taxpayers also have the highest municipal overburden in the state. (Defendant Board's Exhibits 30, 33 & 41.) The State offers assistance to school districts whose municipal over-burden (i.e. the total property tax rate in the district excluding the amount levied for school operating purposes) exceeds 125% of the state average (Bursley Act, Mich. Comp. Laws Section 338.1125). The Act is designed



to aid school districts throughout the state that are unable to raise sufficient tax revenues because their taxpayers refuse to approve higher millage requests in the face of numerous other taxes imposed on the district by other local taxing authorities. (Tr. Vol. 7, pp. 103-104.) Presently, the municipal overburden section of [1120] the Act is only approximately 28% funded by the Michigan Legislature. If the section were fully funded, the Detroit school district would receive an additional $61,682,000; if it were 50% funded during the 1974-75 school year, the school system would have received an additional $18,787,000. (Tr. Vol. 7, pp. 116-120.) Thus, the State does not supply the Detroit school district with as much money as the Act provides.

26. The power equalizing section of the State School Aid Act guarantees that, subject to certain conditions, each school district will have available $975 per student. If local tax revenue is insufficient to generate this amount, state aid will fund the balance. Complete funding of the balance, however, is contingent upon a local school district millage levy of 25 mills for operating purposes; where a school district levies a lesser amount, state aid is reduced proportionately. While 2.25 mills of Detroit's levy goes to debt retirement rather than operating purposes, the entire 24.76 mills is counted in the formula for state aid. However, state aid does not provide operating revenue to replace the 2.25 mills used for debt retirement. Thus, the 24.76 levy produces operating revenue of only $916 per student in local taxes and state aid. (Tr. Vol. 7, pp. 93-107.)

The Wayne County Tax Allocation Board allocates .64 mills to the Detroit School District, which is passed on directly to the Detroit Library Commission. Since the majority of school districts in Wayne County receive 8.65 mills from the Tax Allocation Board and Detroit receives only 8.01 mills exclusive of the library allocation, this additional .64 mills should be counted in the State Aid calculation; however, it is not. If it were, the district would have a total levy of 25.40 mills and thus would be entitled to the maximum state aid guarantee under the power equalizing section of the Act.

The Detroit School District's millage levy of 24.76 mills is slightly below the state average of 26.15 mills. However, when this millage levy is added to all other taxes assessed against a Detroit taxpayer, the tax burden is greatly in excess of the state average. (Tr. Vol. 7, p. 104; Vol. 24, p. 147.) This burden has caused Detroit taxpayers to reject requests for additional millage. Seven of the ten millage elections over the past eight years have failed. Of the three successful votes, one approved replacing a 1% income tax that the School Board was authorized to levy pursuant to Public Acts 1 and 2 of 1973 with a 7 mill property tax; another merely renewed an already existing 7.5 mills for an additional ten years. (Defendant Board's Exhibit 40; Tr. Vol. 24, pp. 143-144, 150-151; Vol. 7, p. 140.) It can be reasonably expected that the already heavy burden upon Detroit taxpayers will cause them to reject further requests for millage increases in the near future.

27. The cost of education is a function of the size of the system and the Detroit School System, with an enrollment of 257,000 students, is the largest school district in the State of Michigan. Moreover, the fact that Detroit's ranking for per pupil expenditure is above the state average is insignificant because per pupil educational costs are greater in urban areas. Additionally, the drop-out rate in the Detroit School District has been increasing over the past ten years; the reduction in enrollment results in less State aid under the pupil membership formula of the State Aid Act at the same time that the cost of delivering educational services is increasing.

28. Prior to a 1971 legislative enactment, the Detroit School District did not receive any State reimbursement for in-city transportation expenditures, even though reimbursement was provided to rural and suburban school districts. (Tr. Vol. 24, pp. 103-105.) The Detroit School District first received an allocation for transportation in the 1973-74 school year, which was based on costs expended during 1972-73. However, [ 121] unlike other districts, which were reimbursed for 75% of their transportation expenditures,



Detroit was reimbursed for only 92% of the 75% permitted under the Act. Moreover, reimbursement for the Detroit School District was based upon the Wayne County average transportation costs of $47.00 per pupil, while the Detroit School District actually expended $185.00 per pupil. Consequently, Detroit was reimbursed for only $288,770.39 of the $1,857,367 expended for transportation in 1972-73, and $469,981.15 of the $2,696,133 expended for transportation in 1973-74. That Detroit's transportation costs are so high may be explained by several factors. First, transportation costs are necessarily greater in urban areas than in rural or suburban areas. Second, because Detroit received no in-city transportation reimbursement whatsoever prior to 1971, Detroit does not have its own bus system and is forced to rely on more costly chartered buses to transport elementary and junior high school students. Third, Detroit is required to subsidize bus tickets for indigent high school students, which, in the long run, is also more costly than operating a transportation system. (Tr. Vol. 24, pp. 107-123; Vol. 25, pp. 19-20.)

G. *Faculty Assignments*

29. The teacher population in the Detroit School District is 49.5% black. After having established convincingly that fixed racial ratios for pupil reassignments destroy stability, the Detroit Board desegregation plan suggests a scheme for teacher reassignments that achieves a 50-50 black-white racial mix in every school in the district. This approach is overly simplistic. It fails to take account of the qualifications of a teacher to teach the subject and grade level, the necessity of balancing schools with respect to teacher experience and the necessity of considering the sex of the teacher, all of which are necessary ingredients for quality desegregated education. To seek a fixed racial mix, without more, is undesirable and arbitrary.

Witnesses have acknowledged that the 50-50 racial quota for every school in the district was inserted in the Board's desegregation plan for the purpose of making the district

eligible for Emergency School Aid Act (ESAA) funds. However, the parties did not produce credible evidence that Federal funding was denied because of improper faculty distribution rather than because of poorly documented Board applications for such funding. Nor did the parties produce evidence of the Federal requirements for teacher assignments in a desegregated system. We note that 45 CFR 185.44(d)(3) does not require a fixed racial quota for every school:

> "(3) In the case of ineligibility resulting from discriminatory assignment of teachers as prohibited by 185.43(b)(2), such applications for waiver shall contain evidence that such agency has assigned its full-time classroom teachers to its schools so that no school is identified as intended for students of a particular race, color, or national origin. Such nondiscriminatory assignments shall, in the case of a local educational agency implementing a plan descripted in 195.11(a), conform to the requirements of such plan with respect to assignment of faculty. In the case of local educational agencies not implementing such a plan, or implementing such a plan which contains no provision as to assignment of faculty, such assignments shall be made so that the proportion of minority group full-time classroom teachers at each school is between 75 percentum and 125 percentum of the proportion of such minority group teachers which exist on the faculty as a whole." (Pending proposal per 40 Fed. Reg., No. 61 part III, 14173, March 28, 1975.)

It is apparent from the quoted regulation that a school district that has been [1122] found guilty of segregation of staff and that is not yet subject to a court desegregation order may apply for a waiver of disqualification by making assignments "so that the proportion of minority group full-time classroom teachers at each school is between 75 percentum and 125 percentum of the proportion of such minority group teachers which exist on the faculty as a whole." Thus, a school district with approximately 50% minority that has been found guilty of segregation of staff may qualify by demonstrating teacher assignments that conform to 37.0% to 62.0% black. However, the Detroit School System has never been found guilty of *de jure* staff segregation.



The plan submitted by the plaintiffs does not contain any proposal dealing with faculty reassignment; plaintiffs concluded their critique of the faculty reassignment provision in the Detroit Board's plan by stating that they had no desire to resolve collective bargaining disputes unless and until they interfered with constitutional rights of pupils. Notwithstanding this stated position, the only evidence produced in this record concerning teacher reassignments was presented by the plaintiffs, who made reference to Defendant Board Exhibit 6. This exhibit includes summaries of the identification of *educational personnel* by race. Educational personnel consists of more than just teaching staff; it also includes principals, department heads, counselors, library personnel, audio-visual personnel, school-community agents, etc. Thus, whatever correlations plaintiffs draw from this data is incompetent evidence of *faculty* segregation.

There is certainly insufficient evidence in this record to justify a finding that the ordinary administrative and collective bargaining processes of the parties will not satisfy the necessity of having a proper racial mix among the teaching staff of the school district. Moreover, when this court's desegregation order is implemented the necessity of additional teacher transfers on a desegregated basis will become apparent. There is sufficient time for this court to obtain proper and adequate evidence to determine what orders will be essential to achieve a plan for complete desegregation of pupils, faculty and staff.

## IV. CONCLUSIONS OF LAW

A. *General Analysis of Both Plans.* The plaintiffs' and defendant Board's desegregation plans employ the same general techniques for desegregating the Detroit School

System. Both plans pair and cluster schools, fracture grade structures and change feeder patterns of the affected schools. The pairings involve the exchange of one-half of the student population from one school with one-half of the student population of the other. Moreover, both plans provide for massive bussing.[6] Although employing similar methods for desegregation, the parties differ as to what constitutes desegregation, each asserting that his plan is more "feasible", "workable", "effective" and "realistic." These, of course, are proper criteria for testing an acceptable plan. *Green v. County School Board*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

Plaintiffs' approach to desegregation was devised by Dr. Gordon Foster, Director of the University of Miami Title IV Desegregation Center. Dr. Foster began by devising an arithmetical ratio for defining a racially identifiable school. Under his definition, any school that varies more than 15% in either direction from the system-wide racial ratio is racially identifiable. Plaintiffs' plan thus accepts as desegregated any elementary school that ranges between 57.3% and 87.3% black, any junior high school that ranges between [1123] 58% and 88% black and any high school that ranges between 51.9% and 81.9% black. The plan divides the system into five clusters. Racially identifiable black and white schools within each cluster are paired and one-half of the student body of each is transported between the schools. To accommodate school reassignments, grade structures are altered at all schools. Additionally, all feeder patterns are changed to accomplish desegregation of the junior and senior high schools. The plaintiffs' plan does not include any component other than student reassignment.

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6. Defendant Board's plan, according to the court's count, would transport between 51,000-56,000 students, affecting 159 schools. The plaintiffs' plan, according to our count, would bus between 77,000-81,000 students and affect virtually every school in the system.



Unlike the plaintiffs' plan, which proposes to bring every school in the district within 15 percentage points of the system-wide racial mix, the goal of the Detroit Board's plan is to eliminate only the racially identifiable white schools, which are located largely in the outlying sections of the city. Approximately one-half of the district's 218 elementary schools will not be touched by the plan. The Board has determined that a school that has 75% or more of one race is racially identifiable. The Board's plan seeks to attain a 40% to 60% black enrollment in each school involved in the plan, although the presence of Spanish-speaking students, especially in Region Two, brings black enrollment below these percentages in some schools.

The Board's plan affects approximately 55% of the total student enrollment, or approximately 141,554 students (State critique, p. 7) and requires transportation for 51,000 students over relatively short distances. The plan gradually changes the racial ratios of the students in the junior and senior high schools by altering feeder patterns. The Board's plan generally respects regional boundary lines and does not affect three of the district's eight regions.

As an integral part of the pupil reassignment portion of its plan, the Board seeks to continue the operation of one magnet school in each region. The plan also creates a junior high school consortium and co-curricular programs to achieve desegregation at this level. Moreover, the plan provides for the establishment of four city-wide vocational high schools and two additional technical high schools that will have enrollments controlled to conform to the system-wide racial ratio. Additionally, the Board's plan contains several educational components, which involve every school in the system.

B. *The Plaintiffs' Plan.* Our first objection to plaintiffs' plan is that it is too rigidly structured. It controls the entire educational life of a child. Not only does the plan reassign elementary children miles from their neighborhood schools, but because of new feeder patterns into junior and senior

high schools many students will attend schools many miles from their home for eight to eleven years of their school life. Generally, courts have approached desegregation problems with flexibility, recognizing, as they must, that they are dealing with constitutional and equitable rights of children. Plaintiffs' plan will not permit such flexibility. It does not take account of demographic trends or population proportions, black or white. As an inevitable consequence, most schools are 75-85% black. Once implemented, it would identify the entire school district as black.

The plan's sole purpose is to achieve a racial mix within 15% of the system-wide ratio in every school in the district. We reject plaintiffs' contentions that this is the only method that will desegregate the Detroit School System, that their plan eliminates racially identifiable schools and that their plan can be implemented immediately. While plaintiffs' plan increases the percentage of blacks in formerly racially identifiable white schools, this could be accomplished as well by a more flexible plan. Nor does plaintiffs' plan eliminate all racially identifiable schools; it is clear to us that a school that is 85% black, although within plaintiffs' parameters, is a racially identifiable black [1124] school. Further, as will be demonstrated, there are serious obstacles to immediate implementation of plaintiffs' plan.

The basic fallacy underlying plaintiffs' contentions, and the principal source of their plan's rigidity, lies in their definition of a desegregated school. While plaintiffs argue that any school within 15% of the system-wide racial mix is desegregated, the black-white population in the school system is so disparate that these parameters range from 56.4% to 86.4% black. Clearly, it is unreasonable to conclude that, without examining anything more than the system-wide racial composition, a school that is 55% black is a racially identifiable white school. Equally clearly, it is absurd to label a school that is 85% black as "desegregated" merely because it falls within 15% of the system-wide racial mix. To do so renders the concept of racial identifiability meaningless. While the Supreme Court has approved the use of



mathematical ratios in formulating school desegregation plans, it has approved them only as "a starting point in the process of shaping a remedy." *Swann v. Board of Education*, 402 U.S. 1, 25, 91 S.Ct. 1267, 1280, 28 L.Ed.2d 554 (1971). Moreover, the Court noted that "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." *Swann v. Board of Education, supra*, at 24, 91 S.Ct. at 1280.

Further evidence of the rigidity of plaintiffs' plan is found in the fact that, even after transportation, many schools are left 80% or more black. These schools are not scattered at random throughout the system but are clustered in the predominantly black center of the city. See defendant Board's Exhibit 10. Another element of rigidity is the arbitrary selection of pairings in the plaintiffs' plan. Pairings within each cluster were made solely on the basis of the racial composition of the paired schools; in making the pairings, the plaintiffs did not consider the demography of the school district. Consequently, students are often bussed past a nearby 85-100% black school and are transported to another 85-100% black school further from their homes. To do so serves no useful purpose and merely increases travel distances. After all this effort, plaintiffs' plan still leaves the majority of schools racially identifiably black.

Finally, many pairings result in pupil assignments in excess of stated school capacity. For example, the proposed enrollment of 18 junior high schools exceeds capacity. At the senior high level, the plaintiffs' plan avoids over-capacity only by assuming a correction factor for dropouts that projects 13,865 fewer blacks in grades 10 through 12. There is no justification in this record for assuming such a dropout rate for blacks. Records are not available to reflect the race of dropouts, and moreover during the 1973-1974 school year only 9,925 ninth through twelfth grade students dropped out of the system. Plaintiffs' plan further attempts to remedy the problem of over-capacity through the use of the sixth, seventh and ninth grades as "swing grades." Students in a "swing grade" could be reassigned to any school having

capacity. However, there is insufficient justification in the record to conclude that use of "swing grades" will solve the problem of over-capacity. In any event, "swing grades" create a greater burden upon the children involved and increase the amount of transportation necessary to effect plaintiffs' plan.

Our second objection to the plaintiffs' plan is that while it involves extensive bussing, it produces only negligible desegregative results. Plaintiffs' plan itself is a positive pronouncement that the disparate black-white ratio in this district precludes appreciable desegregation. After transporting 77,000 to 81,000 students, plaintiffs' plan accomplishes only an insignificant reduction in the black population of the vast majority of [1125] Detroit schools. If the white population were predominant, plaintiffs' plan could achieve desegregation. Under the practicalities at hand, however, plaintiffs' plan is unsatisfactory because it does not distinguish between bussing black students to majority black schools and majority white schools. As a consequence, it casts a heavy and unnecessary burden upon the black students, notwithstanding the fact that the remedy to be fashioned is to bestow upon them benefits that were denied in the past. Black students are being asked to travel great distances to attend another conspicuously majority black school. The purpose of plaintiffs' plan is unexplainable to the children who are bussed many miles to a school with a racial composition not much different from the composition of their neighborhood school. Plaintiffs' plan could not find the acceptance in the black community necessary to the success of a desegregation plan. Moreover, the cost of the number of busses needed to effect plaintiffs' plan would financially cripple the Detroit School System, which has been operating on a survival budget for the past few years. Although the plaintiffs suggest that only 271 busses would be needed to implement their plan, we have concluded that 840 busses is a more appropriate estimate. Further, the plaintiffs ignore the fact that the Detroit School System does not presently possess the expertise to manage, route, maintain and store such a large fleet of busses. Although the Detroit School



District has in the past bussed as many as 14,400 students to relieve overcrowding, to accommodate dangerous crossings or to transport students excessive distances, such bussing has been accomplished haphazardly through the use of chartered city transportation. Moreover, the record disclosed that the Detroit School Board has not yet formulated bus routes to accommodate a transportation plan. It is no answer that testimony was presented to the effect that certain school system personnel could devise the routes in a relatively short period of time; it is equally apparent from the record that their expertise to do so is questionable.

The establishment of such a vast transportation network would bring chaos and financial destruction to the school system, with the main result of bussing black children to majority black schools. In the final analysis, plaintiffs' plan results largely in isolating minority students in concentrated minority schools, changing only the location of the school that each student attends. Moreover, the price for this insiginficant change is the severe burden of massive transportation. The Constitution does not require that such an extraordinary and costly remedy be applied where it produces only negligible desegregative results. If such an extraordinary remedy as bussing is to be employed, it should be used to bus black children to white schools, not to schools that are predominantly black. The use of such a remedy in these circumstances contains all of the seeds for resegregation, which this court has stated must be avoided at all costs.

C. *The Defendant Board of Education Plan.* The Detroit Board of Education, unlike the boards in other school desegregation cases, is willing to assume its constitutional duty to desegregate the Detroit School System. The President of the Board and the members of the bi-racial administrative staff have convinced the court they will willingly implement any desegregation order the court may issue.[7] Persuasive evidence of assured cooperation from the

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7. The defendant Board took its first step to desegregate the school system as early as 1970 when it attempted to implement the April 7, 1970 plan. This attempt was frustrated only by acts of the Michigan Legislature.

Board and General Superintendent lies in the fact that they have promptly complied with each and every order of this court. Pursuant to an order of the court, the Board timely submitted [1126] a comprehensive desegregative plan; they did not choose to rely upon a "free choice" plan or other methods that provide part-time desegregation. In addition to many educational components and other desegregative devices, the plan includes massive bussing for permanent reassignment of students. Moreover, the attorney for the Board has persistently assured the court that the Board would willingly implement any plan the court may order. The Board has vehemently argued that since the primary responsibility for bringing forth a constitutional desegregation plan rests in the hands of a local school board [*Swann v. Board of Education*, 402 U.S. 1, 15, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Davis v. School District of City of Pontiac, Inc.*, 443 F.2d 573, 577 (6th Cir. 1971)], other plans should not be considered for implementation by the court. We were persuaded, however, that a desegregation plan must be considered in light of all available alternatives. *Green v. County School Board*, 391 U.S. 430, 439, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

Notwithstanding the Board's cooperative disposition, we perceive from the evidentiary hearing and from information furnished to the court both by the Community Relations Service and our own court-appointed experts that the plan adopted by the Board is a compromise taking into account many divergent views. In January 1975, before this court's order to submit a desegregation plan, the Board created the "Office of Desegregation" to prepare a desegregation plan. This Office was staffed by many people with divergent views. The vote to approve the final plan was 9 to 4, split along racial lines. Competing factions within the Board together with their followings have held widely differing views on desegregation. Throughout the remedial hearing, there was excessive speculation concerning what the court would mandate as constitutionally required for desegregation.



As a consequence, the plan as submitted was not well documented. The plan did not inform the court of the extent to which any of the programs suggested exist in the school district at the present time. Nor did the plan present alternatives to the pairings and clusters suggested. Therefore, the court deemed it necessary to commission its experts to obtain information necessary to evaluate the suggested educational components. The court further commissioned its experts to present additional alternatives to the transportation component contained in the plan in order to evaluate the constitutionality of the plan as submitted by the Board.

Having considered the alternatives in light of all the "practicalities" at hand, we conclude that the Board's goal of desegregating by eliminating racially identifiable white schools meets constitutional standards for desegregating the Detroit School System. Moreover, we approve the Board's view that the plan must include educational components allowing for further desegregation and assuring a successful desegregative effort. However, the plan taken as a whole is not free from objection. While disavowing any attempt to adhere to fixed racial ratios for each school, the Board's plan does just that. The Board sought to determine the racial mix that provides the greatest degree of meaningful interaction between the races while at the same time providing reliable assurances of stability. Having established that schools in the 40-60% range have not been changed by demographic shifts, the Board sought to impose this ratio (which is in reality 50%-50% plus or minus 10%) on all of the schools involved in its plan.

Rigid adherence to racial percentages is not only undesirable but constitutionally infirm. Racial percentages may be used as a starting point in formulating a remedy, but it is essential that all of the critical circumstances apparent in a particular school district be afforded proper weight. *Swann v. Board of Education, supra.* It would be simplistic to assume that the mere adherence to racial quotas is sufficient [1127] to counter the pervasive effects of years of segregation. Because of inflexible adherence to these

percentages, some of the Board's school pairings are made without regard to the facts at hand. For example, some of the Board's school pairings include schools that are located in bi-racial residential areas and have become desegregated naturally. To bus white or black children from these schools is to employ transportation solely to accommodate a racial count. Such transportation serves no desegregative purpose and should be avoided by the Detroit Board. Where a school already satisfies the definition of a desegregated school, it should not be included in a transportation plan.

Thus, while we accept the Board's rationale of providing desegregation by eliminating the racially identifiable white schools, we must reject the Board's plan itself because, like the plaintiffs' plan, it is too rigidly structured, seeking to obtain fixed quotas through massive bussing, and fails to take account of the "practicalities." Additionally, the Board's plan is objectionable in that it fails to consider techniques for changing the racial compositions of schools that do not involve transportation. Borderline schools are paired in the Board's plan even where re-zoning across regional lines might suffice to produce desegregation without transportation. Re-zoning is preferable to bussing because it reduces transportation, permits walk-in schools and serves bi-racial neighborhoods. Rather than pair schools and transport students, the Board should first exhaust the possibility of restructuring attendance zones. Where capacity permits, one-way bussing might also reduce the amount of transportation needed to desegregate.

The Board's plan is further objectionable in that it needlessly changes the grade structures of schools involved in the plan. It seems to us that traditional grade structures such as K-5, 6-8 and 9-12, which are preferable because irregular grade structures hamper school curriculum offerings, can be achieved.

Moreover, we are not convinced that the choice of schools involved in the pairings was not influenced by political considerations unrelated to the effect of the individual



pairing on desegregation. In order to detail our concern, we must take account of the structure of the Detroit School System. The decentralized system was conceived to afford an opportunity for the community to exercise greater control over its school system; however, decentralization as practiced in Detroit has not truly accomplished this goal.

Pursuant to Act 48 of the Michigan Public Acts of 1970 (Mich. Comp. Laws 388.171 *et seq.*), the Detroit School System is divided into eight regions, each of which is permitted a vast amount of autonomy. Each region has its own board of education selected by the people within the region. The board member receiving the most votes not only is elected chairman of the regional board but also is a member of the central Board of Education. Thus, eight of the thirteen seats on the Central Board are occupied by regional chairmen. It is obvious that through political maneuvering, the eight regional chairmen can combine to promote regional interests at the expense of the over-all interests of the school system. Thus, desegregation could be hampered through the political maneuvering of the regional board members combining to promote merely regional interests. Since the regional members constitute a majority of the Board, there is no way to ensure that the interests of the entire school system can be advanced.

We are unable to perceive from the Act a legislative intent to create the structure that in fact developed in the Detroit Schools. Rather than decentralizing to disperse bureaucratic authority, the Detroit Schools have developed another completely bureaucratized political institution: the regional boards of education. As originally conceived, the [1128] legislature envisioned "community centered schools", not separate independent bureaucracies substituting for a larger one. Moreover, the present structure of the system frustrates the achievement of educational goals common to all schools throughout the system. The system is no longer a top-to-bottom command educational organization. What has impressed this court as a competent, dedicated staff at the top lacks the means of assuring that its orders and programs

will be executed at the bottom. Any programs designed to advance the interests of the entire system can be frustrated by any one of the eight separate regions. An edict from the top can be diluted so that by the time it reaches the lower level it has little or no impact.

Moreover, the testimony has indicated that the lines of demarcation between the central and regional boards have become obscured. The eight regional chairman acting in conjunction can effectively strip the Central Board of all of its power. Thus, the Central Board appears to have been relegated to the role of advise and consent, and it is apparent from the "Guidelines for Decentralization" (Defendant Board's Exhibit 4) that the Central Board must consent more frequently than it advises. Thus, Detroit voters have been bequeathed no more than a vote for a regional board in exchange for the Central Board. Nothing further toward achieving community control has developed in five years of decentralization. The political institution that has developed has cast a heavier financial burden upon the people of Detroit without resulting in a greater voice for the community in the operation of the school system. Moreover, the structure has not been able to develop or hold public interest in the schools. Thus, the system now proposes to pay for the community relations and participation that the legislature thought would be engendered by the Act itself. The legislature may wish to take a fresh look at the structure that has developed in order to bring it more in line with the stated goals of decentralization.

It is conceivable that the regions themselves might have made demands concerning the very pairings contained in the plan; by soliciting the support of other regions, each region could effectively veto the inclusion of any given school in the plan. Evidence of such political accommodation might exist in some of the pairings chosen for the Board's plan. Some schools that fall within the Board's racial parameters are nevertheless paired to reduce their percentage of black students. For example, Hanneman School is reduced from 58% to 48% black, Cary is reduced from 58% to 44% black, McMillan is reduced from 52% to 41% black and Edison is



reduced from 65% to 51% black. Transportation for the purpose of reducing the percentage of black students in already desegregated schools is clearly unnecessary and is inconsistent with the Board's avowed purpose of eliminating racially identifiable white schools. While the court cannot conclude that the inclusion of such schools in the Board's plan necessarily resulted from accommodation of regional interests for political motives, neither can the court rule out such a possibility.

The Board's plan also includes a number of educational components intended to facilitate desegregation. Some are unrelated to desegregation and have been inserted with the hope that they could be implemented by court order. Moreover, the magnitude and the importance of some components are overly exaggerated. In its entirety, the Board plan requires an expenditure of more than $60 million. However, many of the proposed components have merit. Our remedy includes many of the Board's suggested components and adds others that we feel are constitutionally mandated.

D. *Plaintiffs' Objections to the Board's Plan.* The plaintiffs' principle complaint is that after application of the Detroit Board's plan, the racial composition of student enrollment in Regions [1129] I, V and VIII, which comprise the inner core of the city, remains virtually unchanged at 90% to 95% black. Plaintiffs complain that the racial composition of student enrollment in 87 elementary schools, 18 junior high schools and 8 high schools in those three regions remains unchanged. Considering the practicalities at hand, we do not find that this objection presents any constitutional impediment to the Board's plan. If the number of all-black or predominantly black schools that remain untouched appears to be large it must be remembered that the school district itself is large; it is the fifth largest in the country and contains a total of 326 schools spread over a 136 square mile area in which whites are outnumbered by blacks.

Plaintiffs refuse to acknowledge that the racial composition of these three regions precludes their inclusion in a

desegregation plan. In Region V, for example, there are 31,354 students of whom (excluding the Spanish surnamed) only 989 (3.1%) are white. In Region VIII, there are 29,725 students of whom (excluding Spanish surnamed) only 1,329 (4.5%) are white. In Region I, there are 24,907 students of whom (excluding Spanish surnamed) only 2,049 (8.2%) are white. Clearly, it would be futile to attempt desegregation within the boundaries of these regions; thus, a desegregation plan including these three regions would have to cross regional boundaries. But to include these regions in the Board's plan would bring about the same result that pertains after application of the plaintiffs' own plan. The plaintiffs' plan itself is sufficient proof that any attempt to include these regions produces only negligible results. Application of plaintiffs' plan "would make the Detroit school system more identifiably Black, and leave many of its schools 75 to 90 per cent Black." (Findings of Fact — March 28, 1972, 484 F.2d 215, 243-44 (1973.))[8]

That inclusion of these three regions in a desegregation plan would produce only negligible desegregative results is inevitable because even excluding Regions I, V and VIII there are only 63,446 white students as compared to 103,007 black students. To attempt to disperse those white students throughout the eight regions, including the three overwhelmingly black regions, would produce such negligible desegregative benefits that the extraordinary remedy of such cross-regional bussing would be unwarranted. To do so would only serve to lessen the little community control blacks now enjoy in those regions and, therefore, injure the very class the remedy is intended to benefit. In the face of these "practicalities" there is no constitutional objection to leaving a number of one-race or predominantly one-race schools. *Swann v. Board of Education, supra; Quality Ed. for All Child., Inc. v. School Bd., etc. Ill.*, 385 F.Supp. 803, 823-24 (D.C.Ill.1974); *Davis v. Board of School Commissioners of Mobile County*, 430 F.2d 883 (5th Cir. 1970); *Mannings v. Board of Pub. Instruc. of Hillsborough Co., Fla.*, 427 F.2d 874 (5th Cir., 1970).

8.
The district court's ruling on the Detroit-only desegregation plan is set out in full by the Court of Appeals, *id.*, at 242-245, and is not otherwise officially reported.



Plaintiffs next contend that the Board's decision to leave a number of one-race or predominantly one-race schools in the inner-city regions and the Board's persistence in achieving a "stable" racial mix are based plainly and simply upon the Detroit Board's fear of "white flight." They argue that the Board's decision to allow certain untouched schools to operate under capacity while certain other schools included in the plan are over-utilized is based upon the fear that middle class white families will flee the school district, the consideration of which is constitutionally impermissible. It is true that "white flight", like the degree of community resistance to a desegregation order, is not one of the "practicalities" to be considered in formulating a just, feasible [1130] and workable plan. The law must be obeyed notwithstanding these considerations. The Supreme Court has stated on several occasions that white flight is not justification for limiting the degree of desegregation; nor will it justify a school board's refusal to desegregate. *Wright v. Council of City of Emporia*, 407 U.S. 451, 92 S.Ct. 2196, 33 L.Ed.2d 51 (1972); *United States v. Scotland Neck Bd. of Educ.*, 407 U.S. 484, 92 S.Ct. 2214, 33 L.Ed.2d 75 (1972). Our own and other circuits have similarly ruled. *Higgins v. Board of Education of City of Grand Rapids*, 508 F.2d 779 (6th Cir. 1974); *United States v. Board of Sch. Com'rs, Indianapolis, Ind.*, 503 F.2d 68 (7th Cir. 1974). To hold otherwise would be tantamount to depriving school children of their constitutional rights in favor of those who prefer segregation. Moreover, consideration of white flight would be senseless in view of available statistical data contained in the United States Census Bureau Statistics demonstrating that the exodus from the City of Detroit occurred in the decade preceding the filing of this litigation and has subsided since that date.[9] In any event, the evidence presented does

9.
In addition, it would be unwise for the court to consider white flight in view of the fact that there is an abundance of literature acknowledging that white flight is perceived more as a function of class than race or resistance to desegregative orders. See Nancy St. John, *School Desegregation, Outcomes for Children*, John Wiley & Sons, New York.

not support the conclusion that the Detroit Board was responsive to the fear of white flight in the formulation of its desegregation plan.

On the other hand, it is unreasonable to expect the Central Board to administer a large school system in a vacuum. It is one thing to consider white flight to avoid or limit desegregation; it is quite another thing to consider the practical problems with which a board of education is faced in attempting to achieve an acceptable racial balance without aggravating conditions that produce a self-defeating exodus of the middle class white and black. *Higgins v. Board of Education of City of Grand Rapids, supra.* Detroit's citizens are faced with a tax burden greater than any other city in the State of Michigan. The effects of the community overburden in the district, caused by the degree of taxing authority exercised by the City of Detroit, are not ameliorated to the full extent provided by law because the program is not fully funded by the State. The Board operates in a city that has left little room for taxation to operate the school system. The community at large has already indicated its lack of support for propositions designed to increase the Board's millage by rejecting such proposals at the polls eight times. Not only is it constitutionally permissible to take these "practicalities at hand" into account in forming a desegregation plan, but it would be irresponsible for this court not to consider such practicalities where the very survival of an already bankrupt school system is at stake. To act irresponsibly would deny all school children the right to quality education.

The Board was justified in considering the "phenomenon of resegregation" in devising its plan for desegregation. Well-intentioned middle class blacks and whites will prefer private schools and suburban schools to the prospect of remaining in a school district becoming incapable of delivering basic educational services. A white and middle class black exodus will assuredly result if, as a result of desegregation orders, the school district became chaotic and hostile to intellectual achievement. It was these "practicalities" that were considered by the Board in attempting to



achieve a degree of racial stability, and we find that it is constitutionally permissible to take such practicalities into account. As we have previously said, the plaintiffs' plan itself sufficiently demonstrates the justification for allowing one-race schools to operate in Detroit. [1131] The alternative is to make each and every school in the district identifiably black.

Finally, plaintiffs have presented much evidence establishing that black children in segregated schools suffer adverse educational and psychological damage. This is a principle that has already been acknowledged by the courts, *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), and indeed this principle itself justifies the imposition of a desegregation order. However, the parties differ on the definition of desegregation. We have demonstrated the fallacy underlying plaintiffs' definition. As a result of the application of their plan, all of the schools throughout the district become racially identifiably black. Thus, psychological damage is more likely to occur as a result of plaintiffs' plan than as a result of the plan the court adopts. There are measures for assuring a perception that schools are desegregated other than the presence of white students: equal facilities, integrated faculties and meaningful guarantees that every student is welcome in any school notwithstanding race. Oftentimes, as plaintiffs' plan demonstrates, the use of fixed quotas will not give assurances of desegregation but instead may tend to extend segregation throughout the entire system. In a district where the racial percentages are as disparate as in this district, the existence of predominantly black schools is not demeaning to blacks. A plan that does no more than attempt to achieve the system-wide ratio in each and every school may result in transporting children merely to scatter a few white students here and there among the black students who are in the majority. To seek this result assumes that there is some divine grace in being white. The notion that the mere dispersing of whites here and there is educationally beneficial to black students is demeaning. An appropriate desegregation plan recognizes all the practicalities with which a

particular school district is faced. A desegregation plan must be based upon constitutional and equitable rights of individual students and upon the educational goals that desegregation seeks to attain.

E. *General Conclusions Pertaining to Both Plans.* Many definitions of desegregation have been advanced by courts, educators and social scientists. Some have said that not more than 90% may be of any one race. Others hold that not more than 50% may be of any one minority group. Still others insist on fixed racial quotas that reflect ethnic proportions prevailing in a given area such as a state, county or local community. Some argue for precise ratios while others find that a specified tolerance, expressed as an arbitrary percentage that does not relate to racial compositions but rather is devised to accommodate an approach to planned desegregation, is necessary. If school desegregation does not occur naturally through bi-racial neighborhoods, it must be planned. Limitations may be imposed by the desegregated area. For example, the black proportion of the population can be so great that racial balance will inevitably result in majority black schools. In such an area, only two alternatives are available: The desegregation area must be enlarged or flexibility must be permitted in defining a desegregated setting.

While there are many differences between the plans proposed by the plaintiffs and the defendant Board, both plans share the common defect of relying on fixed racial percentages. Both plans attempt to conform the racial percentage of all of the schools included therein to a predetermined range. We have indicated that the Constitution does not require such an inflexible approach to desegregation. Both plans fail to take account of the practicalities at hand, such as demographic trends, financial limitations, existing grade structures and naturally integrated neighborhoods. Both plans rely exclusively on transportation to reassign pupils without exploring alternative techniques. [1132] In the final analysis, it is because both plans are inattentive to such practicalities that both plans must be



rejected. Because both plans ignore the "practicalities," both plans require massive transportation that is, at least to some degree, unnecessary to achieve desegration.

Plaintiffs contend that there is only one Constitution, equally applicable to all school districts. Thus, they argue that since we would not hesitate to apply their parameters to a 72.5% white school district, we should equally apply them to a 72.5% black school district. We think such an argument in the context of this school district is superficial. The argument ignores the fact that the "practicalities of the situation", which the Constitution requies that we take into account, would be different if the school district were 72.5% white. There would not be, for example, irresponsible bussing of black children to black identifiable schools. Thus, we are required to bear in mind that plaintiffs represent a class of blacks, and that the bussing of black students to identifiably black schools places a burden on the blacks, the very class whom the remedy is supposed to benefit, far in excess of the benefit resulting therefrom. Moreover, because plaintiffs represent a class of blacks and not a class of whites, desegregation requires only that plaintiffs themselves be represented in significant proportions throughout the school district through the elimination of identifiably white schools. That a unitary school system in Detroit would not require the elimination of black identifiable schools as well is obvious from the plaintiffs' argument: If the system were 72.5% white, dispersing the blacks throughout the entire system would not eliminate white identifiable schools.

Moreover, that elimination of white identifiable schools is sufficient for desegregation in Detroit is apparent from consideration of the evil desegregation is designed to correct. As plaintiffs have argued throughout this litigation, the evil of segregation lies in the devastating psychological impact upon black children of the knowledge that they are being excluded from white schools. "To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way

unlikely ever to be undone." *Brown v. Board of Education*, 347 U.S. 483, 494, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954). However, when blacks are represented in all schools throughout the system, i.e., when white identifiable schools are eliminated, this psychological effect no longer exists. There no longer is a denial of their right to equal protection when there are no schools from which they are excluded.

We have concluded that the rationale behind the Board's proposed plan promises meaningful disestablishment of the state-imposed segregation. We perceive it to be our obligation to assess the effectiveness of the Board's plan in the light of the circumstances present and options available. Accordingly, the remedy we propose will set forth constitutional guidelines. *Green v. County School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968).

From the above, it is apparent that a fresh start is required to dismantle the remaining vestiges of a dual school system. We are prepared now to furnish the Board with guidelines solely devoted to this purpose and to assure quality education for all children in the system.

## V. REMEDIAL GUIDELINES

The remedial guidelines that we detail herein define constitutional requirements for dismantling the dual school system found to exist in Detroit. In fashioning these guidelines, we have carefully considered the "practicalities of the situation" existing in this district. The guidelines are characterized by the flexibility needed to accommodate conflicting [1133] community concerns. We have not, however, allowed flexibility to substitute for effectiveness, and it is our belief that these guidelines will achieve quality desegregated education for all children.

Recognizing that the interest of the community as a whole is a legitimate concern of the district court in formulating a



desegregation remedy, the Supreme Court has furnished the basic guideline:

> "Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis v. Board of School Commissioners of Mobile County*, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971).

Because a desegregation plan is comparable to other equitable remedies, these guidelines are not premised upon a supposed inflexible constitutional standard that each school must have a predetermined racial composition. *Swann v. Board of Education*, 402 U.S. 1, 24, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974). Accordingly, there may be variances in the racial mix between regions and between schools within a region. The guidelines recognize that inflexible parameters are artificial and arbitrary and that their application to the Detroit schools would disrupt and bankrupt the entire system. Thus, rather than focus on each school in the system, the guidelines balance the practicalities that affect the system as a whole. Reflecting such practicalities, the guidelines recognize the impossibility of eliminating all racially identifiable black schools.

Further, consistent with general equitable principles, the guidelines balance the burden imposed against the desegregative results achieved. They recognize that transporting children is an extraordinary remedy to be employed only when appreciable results may be accomplished thereby, and then only when other alternatives have been exhausted. Therefore, our guidelines do not require transporting black children to predominantly black schools. Nor do they require transporting black or white children from naturally desegregated attendance areas. The guidelines acknowledge that the goal of desegregating this school system

requires the elimination of racially identifiable white schools. Therefore, the guidelines require that a representative number of black students be assigned to every school in the district. However, taking account of the wide variance in racial composition existing throughout this school district, these guidelines do not attempt to eliminate racially identifiable white schools by imposing fixed ratios. We suggest a 50-50 racial mix only as a starting point; we permit variations that take into account the desegregative results likely to be achieved.

Further, the guidelines recognize that, in a unitary school system, each school need not reflect the system-wide racial ratio. The guidelines consider criteria for measuring a unitary system other than ratios, such as faculty assignments, staff assignments, extra-curricular activities, equality of facilities and assignment patterns. Moreover, the central theme of the guidelines is that equal educational opportunities must be available for all children. An equitable, workable and feasible plan must do more than just reassign students. Thus, the guidelines provide for educational components designed both to equalize the delivery of educational services at all schools and to restore quality education, which has deteriorated due to past acts of discrimination. Still other guidelines outline components designed to assure successful implementation of the court order by meeting head-on the special problems accompanying desegregation.

From these guidelines a plan should evolve that creates a unitary school system in which every school in the community will be open to all students, [1134] regardless of color. At the same time, the guidelines do not neglect those considerations that would make it difficult for the system to maintain the financial support of the community. Inherent in these guidelines is the recognition that a desegregation case requires a search for a solution that is equitable and fair to all. Only in this way can stability be assured and a sound educational system be preserved for the entire community.



1. *Guidelines for Revision of the Board Plan – Student Transportation*

The guidelines that follow will aid the Board in producing a plan that eliminates the remaining racially identifiably white schools in the district by reassigning black students, who are in the majority, to schools throughout the city. It has been emphasized, however, that these guidelines do not sanction adherence to fixed racial ratios; they permit variation based on the constitutionally required consideration of the "practicalities of the situation." *Davis v. School Commissioners of Mobile County*, 402 U.S. 33, 37, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971). The guidelines recognize that variation in racial ratios is a function of many factors and does not necessarily diminish the degree of desegregation.

From these guidelines, a plan should evolve that effectively desegregates, brings into equitable balance the objectives sought and the results to be achieved,[10] and exhausts all alternatives before settling on the best method to achieve its results. Such guidelines follow:

(a) Where possible, desegregation should be accomplished by re-zoning attendance areas in lieu of transporting children.[11] Before using transportation, the Board must establish that all re-zoning methods have been exhausted. The re-zoning should be attempted only after all the requirements of the court's order are considered. The Board is reminded that when re-zoning efforts are attempted,

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10. In *Swann v. Board of Education*, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554 (1971) the district courts are reminded that a desegregation case is no different than an ordinary case in equity. The court stated: "The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution."

11. Although the plaintiffs attempted to desegregate by rezoning attendance areas, it is this court's belief that their failure to do so was a result of their definition of a desegregated school. There is no evidence in the record that, given this court's more flexible approach to desegregation, rezoning attendance areas will not be a useful desegregative tool.

regional lines need not be respected; when the choice is between preserving regional lines and bussing, regional lines must give way. Re-zoning will reduce the amount of transportation required to desegregate and will permit the use of walk-in schools in integrated neighborhoods.

(b) The revised transportation plan should avoid bussing black children to predominantly black schools. A school that is 55% or more black is a predominantly black school. Neither black nor white children should be bussed to schools that are already desegregated according to these guidelines; transportation under such circumstances produces an inequitable burden upon the children affected. Where only a small change in enrollment is needed to bring a school within the 30% to 55% range, the use of satellite zones should be explored. We trust the Board is assembling the data base suggested by the court to create computer print-outs showing the racial composition of neighborhoods by grids. When these data are compiled the Board will be able to avoid transportation under the conditions described above.

The Detroit School System now transports 14,400 students by chartered bus to relieve overcrowding or to overcome dangerous crossings and long distances. Attempts should be made to [1135] accommodate these children at neighborhood schools by re-zoning where the neighborhood school is an equal facility. However, if such transportation is necessary to desegregate the receiving school, it should continue. In the event that it is essential to bus these students they should be transported to aid desegregation only in accordance with these guidelines.

(c) Elementary schools should not be paired when one or both of the schools already satisfies the court's definition of a desegregated school.[12] Where desegregation cannot be

12.
For example, in the Southwest Constellation, the Carrie School is paired although it is already 58% black. In the Chadsey Constellation, the Hanneman School is 58% black. Moreover, the Board plan sometimes precludes students within walking distance of a school from going to that school. For example, the Burt Elementary attendance zone is in the Redford area, yet Burt students have been assigned to Cooley rather than Redford. Similarly, students in the Schultz attendance zone should go to Mumford, yet they are assigned to Redford.



accomplished by re-zoning or the use of satellite schools, the Board may pair appropriate schools. In making the pairings the Board should, wherever possible, pair an identifiably white school with the nearest school exceeding 55% black enrollment. In this way, the distances involved in transportation will be kept to a minimum.

(d) The Board should seek to maintain uniform grade structures, consisting of K-5, 6-8 and 9-12. Since an excessive variety of grade structures makes it difficult to provide school offerings consistent with quality education, consistent grade structures are preferable. Irregular grade structures would make it difficult to incorporate the components contained in the court's order and would make the plan more difficult to monitor.

(e) *Desegregation and Integration Guide Translated Into Percentages and Racial Ratios.* This guideline is derived from assessing the practicalities confronting the Detroit School System, such as a rapidly increasing black student population and meager financial resources.[13] Schools with a resident population in the service area of between 30% and 55% black shall be considered desegregated. If a school is within this range, no change in pupil assignment is necessary. Further pupils need not be reassigned merely because a school's racial composition exceeds 55% black; the "practicalities" may dictate leaving the school alone. However, in no event should a school remain more than 70% white.

(f) *Elementary Schools.* Consistent with the foregoing, elementary schools should be desegregated by re-zoning if possible. An elementary school with a resident population in

13.
Another factor that the Board may wish to consider in making its pairings is the "Weighted Poverty Index" of each school, which varies in Detroit from 0.18 to well over 40. The socio-economic mix, as measured by the poverty index, is a significant factor and should be considered along with the racial mix. As far as possible, the Board should strive to have no school with a poverty index greater than 15.

the service area of between 30-50% black has achieved a permissible degree of desegregation. In those schools where a small change in enrollment will bring the school within these parameters, attempts should be made to do so by using a satellite zone. In selecting satellite zones, an appropriate group of children to select would be a group residing in an elementary service area that includes a middle school to which the children can walk. Transporting a child for his elementary school career would be more equitable if the child could later walk to a middle school. Although it may be impossible to divide the burden involved in a desegregation plan equally, the Board must avoid gross inequities. Particularly, there should not be great variations in the transportation burden falling on adjacent areas because such variations will influence residential patterns. The [1136] Board should further avoid bussing children out of an integrated service area.

Since K-5 grade structures will result in excessive school capacity, the Board can take antiquated school buildings out of service. These closings and subsequent pupil reassignments are intended to equalize facilities and to further desegregation both by adjusting racial composition and by facilitating a non-discriminatory construction program. The Board may also consider closing some schools temporarily if further desegregation would result.

Elementary schools that cannot be desegregated by re-zoning or by satellite zones shall be paired. If possible, the grade structure at each paired school shall remain K-5 provided the paired schools have approximately equal enrollments. Pairings need not be made one on one; for example, a 900-pupil school can be paired with a 300 and 600-pupil school. If maintaining the grade structure K-5 is not possible, the changing of grade structures will be permitted. Enrollments in schools can be adjusted by redrawing the service area zone lines.

The paired schools will be desegregated by exchanging pupils between the pairs. One-half of the pupils in each grade



from each school will be bussed to the school or schools in the pair. The classes will be rotated annually or semi-annually so that each child will attend his neighborhood school at least every other year. Teachers also may be rotated so they can continue to teach the same group of students. When the pairings are completed, students should enter integrated classrooms.

(g) *Middle Schools*. Middle schools will serve Grades 6-8. To provide for the maximum degree of desegregation, there will be two types of middle schools: "zoned middle schools" and "open enrollment middle schools." The open enrollment schools will function similarly to current magnet middle schools, but will have a controlled racial mix generally 55-70% black. The racial composition may exceed these parameters where practicalities require, but in no event should a school exceed 50% white. The zoned middle schools need not have zones that correspond to elementary service boundaries. In developing the zones, the Board shall provide walk-in schools wherever possible. Although a zoned middle school that is 30-55% black shall be considered desegregated, the Board's target should be 50% black enrollment at this level. In developing zones for middle schools, the Board may consider satellite zones but such zones should be avoided where it can be shown that they would create housing instability resulting from differing treatment of adjacent neighborhoods.

Generally, no child should be bussed for more than five of his first eight years. Any child that is bussed for desegregation at the elementary level for five years should not be bussed for desegregation to a middle school. If the Board finds compliance with this guideline impossible, the Board shall report the exceptions by numbers, race and location.

(h) *Summary*. We believe these guidelines provide sufficient latitude to accommodate the practicalities needed to be considered to preserve a financially crippled school system. The suggested parameters permit the Board to

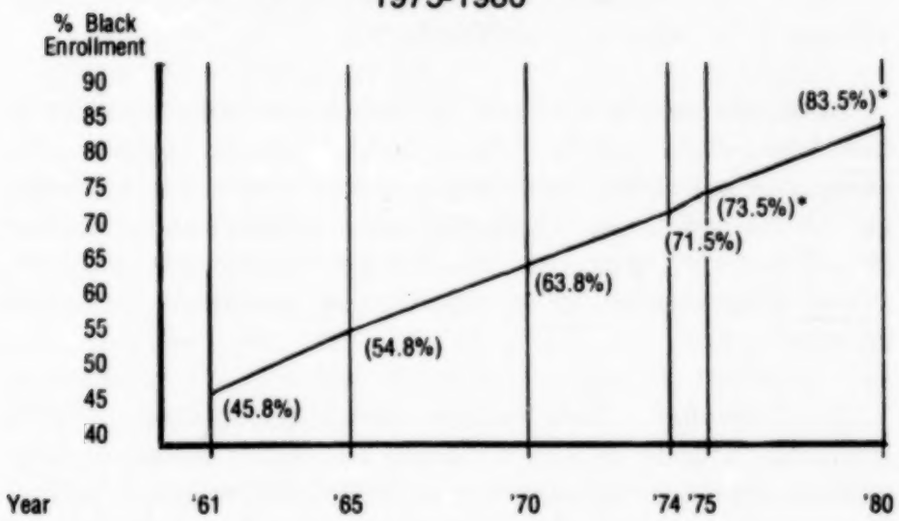
consider inevitable demographic trends and allow the formation of long-range plans to deliver quality education and maintain financial independence. (See chart following — Demographic Projections 1975-1980.) This kind of stability, which assures the durability and longevity of court orders requiring desegregation now and hereafter, is constitutionally compatible with the desegregative goals the Board must seek.

Moreover, these parameters recognize an equitable constitutional balancing of private and public needs. Students, particularly older students, must be able to perceive that the inconvenience of attending a less accessible [1137] school serves a noble goal, that a desegregation plan will enhance the quality of education and that desegregation is neither disruptive nor destructive.

In sum, the plan will have the following characteristics:

(a) Schools as presently constituted, either by resident enrollment, bussing to relieve overcrowding or bussing resulting from school closings, that result in a 30%-55% black enrollment shall be considered desegregated.

DEMOGRAPHIC PROJECTIONS
1975-1980




*Projected



[1138] (b) In providing further desegregation, a 50-50 enrollment may be used as a starting point for reassigning students, but no school shall be less than 30% black.

(c) Pairing shall involve only schools with enrollments under 30% or over 55% black. To minimize travel distances, pairings shall be made between each white school and the nearest predominantly black school.

(d) As far as possible, the schools will maintain a uniform grade structure of K-5, 6-8 and 9-12.

(e) Elementary schools will enroll children in grades K-5. Classrooms or half classrooms will be exchanged between the paried schools on a rotating basis, permitting each child to attend his home school at least every other year. Not all elementary school children will attend paired schools; some will reside in integrated neighborhoods and as many elementary schools as possible will be desegregated by redesigning attendance zones. Where possible, satellite zones rather than two-way bussing will be used. Where bussing is needed, bus trips will be as short as possible. The change in grade structure from K-6 to K-5 will generate excess elementary school facilities, enabling a number of antiquated schools to be taken out of service.

(f) Middle schools, 6-8, will be of two types: "open enrollment" and "zoned schools." In keeping with these guidelines, open enrollment schools will have racially controlled enrollments. Where the practicalities permit, middle schools will be 55-70% black, and no middle school will enroll less than 50% black.

(g) The plan will involve the creation of vocational centers.[14] Two high schools may be converted into vocational centers; students currently enrolled in these schools will be reassigned to other nearby schools, thus

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14. See section on Vocational Education, *infra*.

aiding desegregation. Although the vocational centers will be open to all students city-wide, their racial compositions will be controlled. Initially, no high school or vocational center shall enroll less than 40% minority. Thereafter, enrollments will be controlled to conform to these guidelines. Curriculum studies will be necessary to adjust the present city-wide schools such as the Aero Mechanics High School.

2. *Reading and Communication Skills*

The development of proficient reading skills is the most essential educational service a school system can deliver. Where a school lacks a successful reading program, a child cannot be assured academic success or a beneficial school experience. Students who have not achieved adequate reading and communication skills cannot succeed in the main-stream of society. They are limited in their vocational selection; their handicap necessarily precludes them from entering the professional world. While in school, they cannot be fairly tested.

There is no educational component more directly associated with the process of desegregation than reading. Statistical data establish that minority youngsters lag significantly behind their white counterparts in reading skills, which in turn affects the ability of minority students to follow written instructions, succeed on aptitude tests, pass entrance examinations for colleges and universities and compete in the world of arts, sciences, occupations and skills. Moreover, when such conditions persist, there is a direct effect upon the school environment. Students become disciplinary problems when in reality their problem is directly associated with an inability to conceptualize due to a lack of proper reading and communication skills. As a consequence, teachers and staff assume that such minority students are uneducable, thus further deteriorating the school environment for these students. To eradicate the effects of past discrimination, a remedial reading program [1139] should be instituted immediately to correct the deficiencies of those midway in their educational experience.



The court considers this component deserving of top priority in a school district undergoing desegregation. Accordingly, the court's order will direct that the development of such a program in the desegregative process be the direct responsibility of the General Superintendent and a committee to be selected by him.[15] We trust that such a committee will include some of the expertise available in the Michigan community. Detroit is fortunate in having a number of people expert in developing learning techniques for reading who are at the same time devoted to Detroit's educational system. This court hopes that the General Superintendent will personally pioneer this effort to achieve excellence unequaled by any other school system.

3. *In-Service Training*

A comprehensive in-service training program is essential to a system undergoing desegregation. A conversion to a unitary system cannot be successful absent an in-service training program for all teachers and staff. All participants in the desegregation process must be prepared to deal with new experiences that inevitably arise. The order that follows pursuant to these guidelines requires in-service training in such fields as teacher expectations, human relations, minority culture, testing, the student code of conduct and the administration of discipline in a desegregated system for all school personnel. The program shall also include an explanation of the purpose and nature of each component in the desegregation order. It is known that teachers' attitudes toward students are affected by desegregation. These attitudes play a critical part in the atmosphere of a school and affect the pulse of the school system. Teachers, both white and black, often have unhealthy expectations of the ability and worth of students of the opposite race. Moreover,

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15. We direct the General Superintendent's attention to the Public Report of the Education Task Force, as revised March 5, 1975. The recommendations with respect to development of a reading program and suggestions contained therein are endorsed herein.

it is known that teachers' expectations vary with socio-economic variations among students. These expectations must, through training, be re-oriented to ensure that academic achievement of black students in the desegregation process is not impeded. A comprehensive in-service training program will ensure that all students are treated equally in the educational process. The goal of a sound in-service training program should be the awareness that there are neither black students nor white students, just students.

The Detroit Board of Education is advised that Wayne State University and other universities have offered their cooperation in this desegregation effort. Accordingly, the Board shall request the Wayne State University College of Education to assist in developing a comprehensive program to provide in-service training. The court is of the view that the program outlined in the Board plan will fulfill the expectations of the court order. The Detroit Board is further directed to seek assistance and funding from the Title IV Center at the University of Michigan and, upon issuance of the court order, to submit further proposals for assistance to the United States Office Of Education for Emergency School Aid Act (ESAA) funds. Moreover, the defendant Superintendent of Public Instruction is directed to seek financial and personnel assistance from other state institutions. The in-service training program as instituted should be on-going, include all schools in the system and be open to all personnel employed by the Detroit Board of Education. Such in-service training sessions shall be conducted during the school year and just prior to the opening of school. The Board should discontinue [1140] payment to teachers for attendance at such sessions on Saturdays.

4. *Vocational Education – Technical High Schools*

Open association with other students of varying races, cúltures and religions forms the most basic ingredient in a student's learning experience. Children living, learning and playing together convert a building into a human institution with a pulse and personality. Students, parents and teachers



come together to live, learn and work in an atmosphere imbued with human warmth. In this atmosphere, the attachments born of a classroom become the most durable. A segregated system deprives students of this interpersonal learning experience and injures them in a lasting way. The resulting isolation destroys the atmosphere and pulse of a school system and, eventually, the quality of the educational services rendered. Minority students in segregated settings often lose interest in education, eventually believing they have no stake in the system. This inevitable result is reflected both in the school system's dropout rate and in the number of students who graduate without being able to read or spell. Thus, a segregated school system fails to provide relevant and diversified programs to meet the needs of the students it serves.

Vocational education is given high priority in these guidelines because while it is able to compensate for past discrimination, at the same time it serves as an effective tool for desegregation. It can both offer an immediate desegregated setting and help re-establish quality education. Vocational education is easily assimilated into the Magnet Program now in effect in this system and offers attractions that exceed those currently available. It can serve to combat the dropout rate and prepare students for specific work situations in the business world. Finally, it will equip minority students with the knowledge and skills essential to enter occupational trades often foreclosed to them.

Accordingly, the court's order will require that the defendants Detroit Board and State Board of Education create vocational centers devoted to in-depth occupational preparation in the construction trades, transportation and health services. In addition, the order will require that the defendants Detroit Board and State Board of Education create two new technical high schools in which business education will be the central part of the curriculum. It shall be the responsibility of the School Board and the State Board of Education to fulfill their obligations under the Constitution and state law to ascertain that the four vocational centers

created are of the highest quality. Moreover, each of these vocational centers shall include a grade 13 providing advanced offerings both for those students presently enrolled and for other students who have left the system within the past three years.

As an immediate desegregative effort, the Detroit Board of Education and the State Board of Education are directed to create two such vocational centers as promptly as circumstances permit. In order to eliminate the need for new construction, two existing facilities may be selected; the court's experts suggested that Cooley and Kettering be utilized as vocational centers. Accordingly, the Detroit Board shall immediately submit a plan conforming to the following guidelines:

(a) The plan shall indicate where students presently assigned to Cooley and Kettering will be reassigned and the effect of such reassignment upon desegregation. The plan should minimize the inconvenience to students who would otherwise enroll at these schools. The Board may wish to consider the feasibility of not enrolling students at either Cooley or Kettering in the September, 1975 school term.

(b) The Board shall submit maps depicting the new high school zones that result from the elimination of the Cooley and Kettering attendance areas.

[1141] (c) The plan shall contain detailed curricula for Cooley and Kettering High Schools.

(d) The vocational centers at Cooley and Kettering shall be city-wide schools and shall have a racial mix that, considering the practicalities at hand, approaches a ratio of 60% black and 40% white.

(e) The Detroit Board and the State Board should confer immediately and submit a plan to the court not later than three weeks from the issuance of the court's



order. The plan should include a time and cost schedule for modifications necessary to convert Cooley and Kettering High Schools into vocational centers and should also include proposals for two additional centers. The parties are directed to ensure that these vocational centers are equal in quality to the best vocational schools in the country.

As an immediate desegregative effort the Detroit Board shall, as promptly as circumstances permit, undertake to create two additional technical high schools, which are to be modeled after the program at Cass Technical High School. The Board shall select sites for such technical high schools that afford the maximum degree of desegregation. In keeping with this desegregative effort, the Detroit Board of Education and the General Superintendent shall commission a study of the curricula to be established at the two technical high schools. The study should determine what duplications might exist between offerings at the technical high schools and the vocational centers or the academic high schools.[16] After formulation of the joint plan for creation of the vocational centers, the State Board of Education shall submit such plan for review and evaluation to an appropriate evaluation panel such as a vocational education expert at an institution of higher learning. When the joint plan is submitted, it shall include the evaluation made by such expert and modifications suggested as a result of such evaluation.

Upon recommendation of the court-appointed experts, the order of the court will direct, as a further desegregative effort, that the Detroit Board of Education undertake a study

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16. The Board's plan as submitted does not distinguish clearly between courses to be offered at the vocational centers and the technical high schools. The study should identify the offering of courses duplicating those at other high schools; duplication might detract from the magnet programs instituted at the two new technical high schools. The study should further determine the effect of duplication of courses at different locations upon desegregation and the quality of education.

evaluating an alternate form of education following the Parkway Concept. The court's experts have suggested that Northern High School could be used for such a project. Accordingly, the defendant School Board is directed to submit plans for such a program, including an evaluation of its feasibility and the contribution that such a program might make to desegregation. The Board shall further seek and obtain a professional evaluation of such concept from outside the School Board's present administrative staff. If the evaluation is favorable, the Board shall thereafter submit plans and costs schedules for implementation of such concept.

It has been brought to the attention of the court that the Detroit School Board is presently ineligible for full funding from the state to operate the proposed vocational education programs because certain provisions of the contract between the Detroit School Board and the Detroit Federation of Teachers, which require that a school day not exceed 7¼ hours and impose a maximum of 25 teaching periods per week, conflict with regulations promulgated by the State Board of Education. The court, however, has stated that vocational education programs must be instituted pursuant to a desegregation mandate. Accordingly, the parties shall appear in court for a hearing and subsequent order that will set aside either the State [1142] Board of Education regulations or the contractual provisions. The date for the hearing shall be set upon motion to be filed by the Detroit Board of Education.

5. *Testing*

Of great importance to a system undergoing desegregation is the assurance that tests administered to students are free from racial, ethnic and cultural bias. Black children are especially affected by biased testing procedures. As a result of such procedures, they may find themselves segregated in classrooms for slow learners, which will thereafter impede their educational growth. Moreover, the discriminatory use of tests results can cause resegregation.

The Detroit Board and State Board of Education are constitutionally mandated to eliminate all vestiges of



discrimination, including discrimination through improper testing. Thus, the Detroit Board and the State Board of Education must devise a program that will ensure that testing design, content and procedures are adaptable to a desegregated school system. The plan should include provisions dealing with staffing and costs involved. We have examined the Board's testing component carefully and have found it to be sufficiently comprehensive to serve as a model for such a testing program.

6. *Student Rights and Responsibilities*

By previous orders this court has demonstrated the high priority that it places on student rights and responsibilities, which the court has referred to as a Uniform Code of Conduct. We have also said that children living, learning and playing together convert a building into a human institution with a pulse and personality, and that when students, parents and teachers come together to live, learn and work the school develops an identifiable environment. It is this environment that the Detroit Board is constitutionally bound to protect in order to assure that every student can enjoy the right to a happy, healthy and rewarding school experience.[17] Moreover, we agree with the plantiffs' assertion that "[n]o violence whether against person or property, will be allowed to impede the implementation of the desegregation process. Both students and teachers must feel secure in their person and in their ability to perform their respective functions without fear of undue and unnecessary disruption."

It is the court's intention that from the commencement of the 1975-1976 school year the Board must not tolerate violence in any school in the system. Moreover, the court order will require that the Uniform Code of Conduct be administered uniformly without regard to regional lines. All regions will be obliged to follow prescribed forms and uniform procedures, to be devised by the Central Board and

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17. See this court's order of July 3, 1975.

approved by the court. The court will not, of course, attempt to substitute its judgment for the discretion of school administrative personnel in dealing with student violations of the Code. The court will ensure, however, that all Detroit students are afforded minimal right of due process consistent with *Goss v. Lopez,* 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975). While the court is concerned that violence and vandalism do not impede the desegregative process, the court is equally concerned that the rights of the students are fully protected. In a system undergoing desegregation, black and white students will be subjected to teachers of both races who may apply the Code in a discriminatory manner. Staff members must be made aware of the rights of due process set forth in the Code. Moreover, students must be advised not only of the conduct prescribed, but also of their right to due process when involved in disciplinary procedures. The Code therefore, must simultaneously protect the students against arbitrary and discriminatory exclusions, suspensions or expulsions and assure that disruptions in the school or classroom will be dealt [1143] with in every instance. The court has recently received the Board's second draft of the proposed Code. Since the court has not had an opportunity to study this draft, the Board will await further directions from the court.

7. *School-Community Relations (Parental Involvement)*

The importance that the court places on this component is evident from the July 18, 1975 communication requiring the Detroit Board to submit a detailed plan for a community relations program, which the court has not yet had an opportunity to examine in detail. We agree with plaintiffs that an acceptable community relations plan should include provisions for school-community liaison and parental involvement. The school-community relations program should give real meaning to the decentralization anticipated by the Michigan Legislature and provide an effective vehicle for true community involvement in all the schools. To achieve maximum community participation the program should depend upon parental support; participants should be



selected voluntarily and serve without compensation. An effective community relations program must develop a partnership between the community and the schools and must cooperate with traditional groups such as parent-teacher organizations and local school advisory boards. There should be a cooperative flow of information from the school to the community and from the community to the school. Open and free discussion and participation in the desegregation process should be encouraged. The school-community relations organization should receive complete encouragement, budgetary support, direct assistance and a free flow of information from school authorities.

The school-community relations component shall be a subject of a separate order of this court. The portion of the Board's plan that includes a monitoring provision in the suggested community-relations component is rejected.

8. *Counseling and Career Guidance*

School districts undergoing desegregation inevitably place psychological pressures upon the students affected. Counselors are essential to provide solutions to the many problems that result from such pressures. Moreover, the success of the vocational and technical schools created herein depends upon the efforts of counselors whose guidance is essential to students seeking a career. Counselors can accomplish much to shape and guide the academic experiences of students. They assist student self-development and further can acquaint students with the vocational training possibilities available in the system. It will be essential that the counselors become fully acquainted with the vocational and technical offerings created herein. Accordingly, the order issued pursuant to these guidelines will require that the Detroit Board provide guidance and counseling services, including career counseling to the junior and senior high students in the Detroit system.[18] The Board

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18.
It is not for the court to determine how this program ought to be staffed. We note, however, that we are unaware of any school system that has deemed it beneficial to assign full-time counselors at the elementary school level. Some school systems have found that classroom teachers who are afforded appropriate in-service training make the best counselors at the elementary level.

is hereby directed to submit a career guidance and counseling plan.

9. *Co-curricular Activities*

Co-curricular activities are essential supportive programs in a system undergoing desegregation. Co-curricular activities further desegregation by providing student-to-student contact and interplay in a desegregated environment. The co-curricular program should include a provision for a limited junior high school consortium, which also encourages the sharing of educational experiences among students of both races. In addition to aiding desegregation, the co-curricular program can acquaint students [1144] with the many fine institutions available in the Detroit area, which have indicated their interest in aiding the court in providing quality education to Detroit school children. The junior high school consortium will enable students to share experiences while acquiring knowledge of such institutions as the Art Institute, the Detroit Public Library, the Merrill-Palmer Institute, Wayne State University and Shaw College. The court has reviewed the provision for co-curricular activities in the Board's plan and has concluded that it contains imaginative programs. The court's order will, therefore, require that the Detroit Board develop for the court's approval a specific plan for co-curricular activities including an analysis of the costs involved.

10. *Bilingual/Multi-Ethnic Studies*

Multi-ethnic studies are essential elements of the curriculum of any outstanding school system; desegregation serves only to emphasize the need for inclusion of these studies. Moreover, by state law school districts are required to provide adequate programs for bilingual and bi-cultural instruction. See Mich. Comp. Laws sections 340.360, 390, 391. The court order will further provide for these programs.

Currently, these programs are funded by Titles III and VII of ESAA. The Board is directed to re-apply for such funds to continue its program and in such application shall include provisions for in-service training for teachers involved in such programs. The Detroit Board is further



directed to seek the cooperation of Wayne State University's Ethnic Learning Resource Center in developing a resource program for comprehensive multi-ethnic instruction.

The Board shall submit finalized programs for each of these studies to the court including provisions for in-service training of the teachers involved.[19]

11. *Faculty Assignments*

The Detroit Board's plan contains a component dealing with reassignment of faculty, providing for a 50% ratio in every school. It has been noted that the teacher population in Detroit is now 49.5% black and hence nearly evenly bi-racial. However, no evidence was presented at this remedial hearing dealing with faculty segregation. Thus, it would be inappropriate for this court to order any reassignment of faculty at this time.

However, notwithstanding the prior holding of this court, affirmed on appeal, that the Detroit Board had not committed *de jure* acts of segregation of faculty, certain reassignments will be necessary to implement the desegregation order. Reassignments of faculty will be necessitated by the reassignments of students. Such faculty reassignments are incidental to the desegregation plan and shall be made with the purpose of further integrating the faculty. The Detroit Board and the Detroit Federation of Teachers shall immediately begin negotiations concerning reassignments necessitated by other components of this plan. Of course, in conducting these negotiations, both parties will no doubt be mindful of the federal requirement for racial composition of faculty and staff in a school system undergoing desegregation contained in USCFR 185.44(d)(3), *supra*.

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19. While we endorse the inclusion of these programs in a desegregation plan, we draw no conclusions with respect to the budget submitted by the Board in its plan, which appears to us to be excessive. Even assuming 163 bilingual teachers are needed, there should be a corresponding reduction in the number of regular classroom teachers.

Thereafter, both parties shall submit a report listing every school, student enrollment by race, the projected student enrollment by race following application of the plan, the present number of teachers in each school by race and the projected number of teachers by race following application of the court's order. These reports shall be submitted to the court prior to an evidentiary hearing to be set by the court.

[1145] 12. *Monitoring*

The court's order will provide for a court-created monitoring system to audit efforts made to implement the court's desegregation orders. The monitoring system created by the court shall provide for broad citizen participation. The monitoring group shall reflect the city's racial and ethnic composition so that the court can receive input from a broad spectrum of the city's population.

Because it is the court's constitutional obligation to audit efforts to implement its orders, the monitoring commission shall report directly to the court. The parties may, for the court's consideration, nominate citizens for appointment to the monitoring commission. The court is of the view, however, that the state, to whom the Fourteenth Amendment is addressed, has an equal obligation to oversee the efforts put forth and results achieved through implementation of the desegregation order. Accordingly, the court will order the State Superintendent of Public Instruction to seek the assistance of available state institutions to provide the supervisory and expert support staff needed to analyze and report the information thus obtained. The State Superintendent of Public Instruction shall suggest to the court a plan that includes the assistance of state-supported institutions such as the Title IV center of the University of Michigan.

In the court's view the monitoring of its orders is an essential part of a desegregation effort. The court recognizes that an effective monitoring procedure will require careful evaluation of the input from citizens' groups appointed. These groups shall be requested to develop meaningful



criteria for evaluation and to suggest and recommend methods for developing a uniform basis of reporting. It shall be the obligation of the State Superintendent and the institutions selected by him to collect and analyze all such data submitted and to provide sufficient staff to supervise the work of the monitoring committee.

## VI. CONCLUSION

In developing these guidelines, this court has not intended to usurp the School Board's administrative authority. Neither has this court intended to substitute its authority for the authority of elected state and local officials to decide which educational components are beneficial to the school community. We are especially reluctant to do so in view of the fact that the school officials are willing to desegregate the school system. Their plan evidences their desire to cooperate in the desegregative effort. Pursuant to an order of this court, they submitted a comprehensive desegregation plan that did not attempt to rely solely upon their Magnet School Program for voluntary desegregation but instead included the forced transportation of a large number of students. Thus, we have taken into account that the "good faith conduct on the part of any litigant in any court, especially a court of equity and, more particularly, in the sensitive area of desegregation, is a vital element for appropriate consideration." *Montgomery County Board of Education v. Carr*, 400 F.2d 1, 2 (5th Cir. 1968).

Moreover, even after a finding of segregation has been made, it is the affirmative duty of the local school board to repair the effects of segregation by constructing a unitary system. But, at the same time, once the state has been found to have discriminated against a class of plaintiffs, it is the constitutional obligation of the court to assure that the denial of equal educational opportunity through segregation is fairly and justly remedied. Thus, the Board must remember that once it begins to desegregate, "the courts have a solemn obligation to determine whether the structure designed by the school board will house a unitary system. This obligation is unremitting . . . [1146] Accordingly, any imprimatur of

judicial approval must be entered with the caveat that until construction of a unitary system is completed, change orders, when appropriate, will be issued to ensure that the designed structure in fact accommodates a unitary system and not a bifurcated one." *Carr v. Montgomery County Board of Education*, 429 F.2d 382, 386 (5th Cir. 1970). It is in this context that the court issues these guidelines. It is for the court to declare *constitutional* standards applicable in a particular school district. The Board is free to do more than these announced standards require, so long as it demonstrates that its additional effort will have a salutary effect upon desegregation; it is the role of the court to ensure that it does not do less than what we have detailed here.

A successful desegregative effort will require cooperation and support from the entire community. Because Detroiters have always volunteered community support to advance worthwhile causes and because Detroiters know that the vitality of their city depends upon the excellence and stability of their school system, this court has already received expressions of support from the community. Many of Michigan's institutions of higher education, business corporations, labor unions and other organizations, public and private, have pledged their support and assistance to assure the successful development of quality education in the newly desegregated Detroit School System.

For example, Wayne State University, in cooperation with other institutions, can undertake prime responsibility in developing and conducting the in-service training program, which has received a high priority from this court.[20] Wayne County Community College has volunteered to consult with the Board and to assist it in the development and evaluation of the Board's proposed multi-ethnic component. It will

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20.
We are informed at this writing that the Governor of the State of Michigan is aware of Detroit's need for this component. We have reason to believe that, consistent with his abiding interest in Michigan's educational system, he will approve necessary budgetary provisions to enable Wayne State University to participate.



further help with an orientation program for academic and guidance counselors. Additionally, labor and industry have demonstrated an active interest in the quality of education in the Detroit Schools. Both sectors of the community have assured the court of their willingness to cooperate and assist in this effort. Labor and industry can be of invaluable assistance by bringing their expertise to the vocational and technical high schools created herein. They can generate jobs for young people and possibly provide equipment needed by the school district. They can also provide opportunities for on-the-job training. It is hoped that the Board will succeed in matching colleges, universities, labor and industry with selected schools or programs to further enhance the attractions available in the school system. The Board, with the aid of the court's experts, should enter into specific agreements with these organizations in order to spell out precisely the roles they will play in assisting the Detroit schools. These institutions will not, of course, be solicited for financial contributions, nor do they intend to interfere with the administrative authority of the Detroit Board. These institutions want to be of assistance to Detroit school children; they have no desire to participate in the administration of the school system. Thus, our guidelines provide the seeds to generate community support.

The guidelines also continue the magnet system to which the school community has devoted so much time and funds. We have sought to strengthen those programs now in existence and have also provided for the creation of additional schools and added attractions, including the anticipated matching of [1147] schools with colleges, universities, business organizations and labor unions. As strengthened, these magnet programs will provide an opportunity for the occurrence of voluntary desegregation. Magnet programs, as a desegregation tool, have been approved by the Federal Education Acts of 1974, P.L. 93-380, § 214(f), 20 U.S.C. § 1713(f), and as strengthened by the court's guidelines will be sufficiently attractive to serve the dual purpose of providing quality education and voluntary desegregation. However, it must be remembered

that the primary goal of these magnet schools is to operate as desegregated schools taking account of the practicalities we have deemed constitutionally permissible to consider.

Although these magnet schools play an important role in the court's guidelines, this court recognizes that total desegregation cannot come about through magnet programs alone. Since 1972, the magnet program alone has proven inadequate to desegregate the Detroit Schools. However, while some transportation may be essential, we believe that the guidelines proposed have substantially reduced the number of students transported from the number involved in either the plaintiffs' or the Board's plan.

The cooperative effort of the entire community will assure a school system capable of fulfilling community aspirations. Such community support will provide the Detroit schools with an opportunity to make a fresh start. Those once deprived of equal opportunity by past discrimination will be assured that their schools are unequaled elsewhere; they will be assured that the injury from segregation, sometimes intangible, will be eradicated. With the support of the community, the court's order will create a unitary school system and assure that past discriminatory practices will neither inflict further injury nor occur again. A school system must evolve that is concerned not with black children or white children, but just children.



**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **RONALD BRADLEY, et al.,**<br>**Plaintiffs,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,**<br>**Defendants.** | **Civil No. 35257** |

## PARTIAL JUDGMENT AND ORDER

Pursuant to the Findings of Fact and Conclusions of Law contained in the Memorandum Opinion filed this cause on this date, IT IS ORDERED AND ADJUDGED that:

(1) The plaintiffs' plan for desegregating the Detroit City Schools shall be and hereby is rejected;

(2) The defendant Detroit Board of Education's plan for desegregating the Detroit City Schools shall be and hereby is rejected in part and adopted in part for reasons set forth in the court's Memorandum Opinion.

IT IS FURTHER ORDERED that:

(1) The defendant Detroit Board of Education and the General Superintendent of Schools, together with a staff unit appointed by the Superintendent, shall, in cooperation with the court's appointed experts, prepare and cause to be prepared a revised desegregation plan for approval by the court, which plan shall incorporate the guidelines contained in Section V "Remedial Guidelines" of the court's Memorandum Opinion;

[2] (2) Said revised plan shall take into account provisions of this order relating to school closings, new construction and school capacities;

(3) Said plan shall be filed with the court as promptly as circumstances permit and the defendant Detroit Board of Education shall forthwith submit for the court's approval a suggested target date for submission of the final plan;

(4) The revised plan shall desegregate as many elementary schools as possible by rezoning and, where small changes in enrollment will desegregate such schools, shall utilize satellite zones. The defendant Detroit Board of Education shall select satellites that permit children transported during their elementary educational period the opportunity to attend a neighborhood middle school.

The revised plan shall provide for a K-5 elementary school grade structure, PROVIDED, HOWEVER, that the grade structure created herein may be altered when, but only when, the defendant Detroit Board of Education can establish that failure to so alter grade structures will lessen the resulting degree of desegregation or will result in excessive travel distances or inconvenience to pupils.

Said plan shall provide for the pairing of schools after a satisfactory showing that such schools could not be otherwise desegregated. In cases in which school pairing is essential, the plan shall provide that desegregation of the K-5 schools will be accomplished by [3] exchanging pupils between the paired schools and shall further provide that the pupils transported will be rotated annually or semi-annually so that children will attend the school closest to their home every other school year or one-half school year, unless the defendant Detroit Board of Education establishes that other procedures are more feasible.



(5) Said plan shall provide for middle schools with a 6-8 grade structure and shall identify all schools designated as middle schools. If a uniform grade structure cannot be maintained, the plan shall fully set forth the reasons therefor and shall in such event include a school building utilization plan indicating the proposed grade structure for each building.

(a) To assure the greatest degree of desegregation, such plan shall provide for two types of middle schools: zoned middle schools and open enrollment middle schools. The open enrollment middle schools shall function in a manner similar to present Magnet Schools and all such schools shall have a controlled enrollment consistent with the guidelines contained in the court's Memorandum Opinion.

(b) The plan shall, for the zoned middle schools, develop zones that provide as many walk-in schools as circumstances permit. Middle schools shall have controlled enrollments as set forth in the guidelines in the court's Memorandum Opinion. The revised plan shall provide that no child may be transported from his or her neighborhood [4] school for more than five of his or her first eight school years. Accordingly, if the child is transported for desegregation at the elementary level for five years, the child will be assigned to a middle school located in the child's attendance area. If this provision cannot be achieved, the defendant Detroit Board of Education shall report where exceptions must be made and the number of children involved by race.

(c) In developing zones for middle schools, the defendant Detroit Board of Education plan shall consider utilization of satellite zones, PROVIDED, HOWEVER, that the selection of such satellites does not result in creating housing instability which might occur from differing treatment of contiguous zones.

(d) In the revised plan, the defendant Detroit Board of Education shall identify each middle school with its projected enrollment by race, and further identify the age and condition of the building and special facilities available (i.e., shops, auditoriums, gymnasiums, swimming pools, etc.) at each middle school. Where differences exist, the Board shall provide a summary of such differences in facilities.

(6) All senior high schools in the system shall enroll students in grades 9-12. Where modifications must be made to presently existing attendance zones to achieve such grade structure, the defendant Detroit Board of Education will forthwith prepare and submit maps depicting the newly created attendance zones.

[5] The newly created technical high schools and the vocational centers shall be city-wide schools. Assignments to these schools and administration of these schools shall be under the control of the Central Board and the General Superintendent. The Superintendent will devise curriculum offerings that are responsive to the needs and interests of the City of Detroit.

IT IS FURTHER ORDERED that:

The Detroit Board of Education and the General Superintendent, together with a staff unit appointed by such Superintendent, shall design, develop and institute a comprehensive instructional program for teaching reading and communication skills. Such educational program shall be characterized by excellence and shall be instituted in every school in the system;

The Detroit Board of Education is FURTHER ORDERED to institute remedial programs to correct past reading deficiencies to accommodate all students still enrolled in the Detroit Public Schools;



The Detroit Board of Education is FURTHER ORDERED to select a committee made up of community members expert in this field to cooperate with such effort.

IT IS FURTHER ORDERED that:

(1) The defendants Detroit Board of Education, the General Superintendent of Schools and a staff unit designated by him, the State Board of Education, and the Superintendent of Public Instruction shall develop and formulate a plan for and thereafter create [6] four vocational centers to teach the construction trades, transportation and related trades, health services, and arts and crafts. Said vocational centers so provided in the plan shall include a grade 13 to provide advanced offerings that permit students to thereafter qualify for transfer to comparable community college programs. Said named defendants shall in addition develop and formulate a joint plan for creation of two additional technical high schools patterned after Cass Technical High School, which shall specialize in business education;

(2) The joint plan so submitted by the named defendants herein shall be submitted on or before August 29, 1975, and shall:

(a) Indicate the site selected for each vocational center and technical high school so created herein and indicate whether new construction or conversion of an existing facility is anticipated;

(b) In the event conversion of an existing facility is anticipated, disclose where students presently assigned to such facilities will be reassigned and the resulting effect of such reassignment upon desegregation, together with maps reflecting changed attendance areas resulting from elimination of areas of converted facilities;

(c) Detail the curricula and program offerings for students attending the vocational and technical high schools created herein;

[7]
(d) Include provisions for bi-lingual and "special needs" institutions;

(e) Cause a study to be made by the defendant Detroit Board of Education of all high school curricula. The Board shall thereafter assure that unnecessary duplications are eliminated to avoid diminishing the desegregative attractions of such schools created herein and phase out outdated programs; and

(f) Provide assurances that vocational centers created for the 1975-1976 school year are properly equipped and staffed. Defendants shall at all times be attentive to procedures disruptive to the continuity of a student's education.

(3) The defendants shall submit simultaneously therewith a detailed cost analysis and time schedule for new construction to be undertaken or conversions to be made;

(4) The vocational high schools and the technical high schools created herein, including the presently existing Cass Technical High School, shall be city-wide schools subject to open enrollment and shall be administered by the Central Board of Education and the General Superintendent. Said schools created herein shall at all times maintain a controlled enrollment as set forth in the guidelines contained in the court's Memorandum Opinion. The defendants shall further provide that any student may seek transfer from the school he or [8] she attends to any city-wide school containing available space when such transfer would diminish racial imbalance;



(5) The defendant Detroit Board of Education shall further undertake a study to determine the feasibility of providing an alternate form of education following the Parkway Concept, and shall, on or before October 1, 1975, report the results of such study to the court.

IT IS FURTHER ORDERED that:

(1) The Detroit Board of Education shall, consistent with the guidelines contained in the court's Memorandum Opinion, institute comprehensive programs for:

In-Service Training;
Bi-Lingual/Multi-Ethnic Studies;
Counseling and Career Guidance;
Testing;
Co-Curricular Activities.

(2) The defendants Detroit Board of Education and the State Board of Education shall jointly formulate and devise a comprehensive testing program consistent with the goals of a desegregated system and shall include in such plans provisions for additional staff to supervise and administer such program adequately;

(3) Each region may, within the limits established by state standards, continue the policies of the Central Board and the guidelines contained in the court's Memorandum Opinion to develop its own curricula responsive to the needs of parents and students within their boundaries;

[9] (4) All co-curricular activities, extra-curricular activities, athletic programs and junior high school consortium programs shall be conducted on a desegregated basis as devised or approved by the Central Board of Education and/or the General Superintendent.

(5) The bi-lingual program instituted by the defendant Detroit Board of Education shall comply with state

requirements as contained in MCL §§ 340.360; 340.390-395;

(6) The defendant Detroit Board of Education shall provide bi-lingual instruction for all kindergarten students requesting such instruction. The General Superintendent shall have the responsibility of assigning such students to designated schools and such assignments shall provide that each class shall contain at least twenty (20) students.

IT IS FURTHER ORDERED that:

The Students' Rights and Responsibilities, Community Relations, and Monitoring Components provided for in the court's Memorandum Opinion shall await further study of revisions submitted thereto and will be subject to further orders of the court, PROVIDED, HOWEVER, the defendant State Superintendent of Public Instruction shall forthwith file with the court a proposed plan for monitoring the court's desegregation effort and shall include therein the requirements and directions contained in the court's Memorandum Opinion.

[10] IT IS FURTHER ORDERED that:

The defendants Detroit Board of Education and the Detroit Federation of Teachers shall immediately begin negotiations concerning reassignments necessitated by the provisions of this order and the court's Memorandum Opinion, and during said negotiations defendants shall be mindful of the requirements for racial composition of faculty and staff in a school system undergoing desegregation contained in CFR 185.44(d)(3);

The defendants are FURTHER ORDERED to submit a report with the court, which report shall list every school, student enrollment by race, the projected student enrollment by race following application of the



revised desegregation plan, the present number of teachers in each school by race, and the projected number of teachers by race following application of the revised plan.

IT IS FURTHER ORDERED that:

The defendant Detroit Board of Education shall have the sole responsibility for designating all schools in the district that shall provide kindergarten classes. The General Superintendent shall assume the responsibility to assure that all kindergarten classes are desegregated wherever possible; PROVIDED, HOWEVER, that in no event shall kindergarten children be reassigned to schools beyond the school closest to their residence, except where such school has not been designated as a kindergarten school.

[11] IT IS FURTHER ORDERED that:

(1) The defendant Detroit Board of Education shall formulate plans for closing as many undesirable and outdated school facilities as possible. To further desegregation, the defendant Board may take any school out of service. Such plan for school closings shall take into consideration the provisions contained herein for new school construction and shall coordinate school closings and construction to facilitate desegregation and to further assure that minority students have facilities equal to those in the remaining portions of the city;

(2) The General Superintendent shall forthwith file with the court a document identifying the site and size of all schools to be closed or taken out of service together with a time schedule for doing so;

(3) The defendant Detroit Board of Education shall forthwith formulate a program for equalizing all school facilities and buildings subject only to the constraints contained herein for new construction;

(4) The General Superintendent and a staff unit designated by him shall assume the responsibility for assuring that the student body assigned to each facility does not exceed the total capacity shown for such facility. However, the student body may be less than capacity when necessary to further desegregation or accommodate class size and teacher-pupil ratios.

[12] IT IS FURTHER ORDERED that:

The defendant Detroit Board of Education and the defendant State Board of Education shall submit a joint analysis of all cost considerations necessary to implement this order, PROVIDED, HOWEVER, that such cost analysis shall take into account reductions incurred through institutional support available pursuant to agreements provided for in the court's Memorandum Opinion and available grants.* The financing considerations relating to all aspects of this order will be subject to further orders of this court, PROVIDED, HOWEVER, that the defendant State Board of Education shall undertake to establish the vocational centers created herein.

IT IS FURTHER ORDERED that:

The defendants Detroit Board of Education and the State Board of Education shall file forthwith, for court approval, a time schedule for implementing all aspects of this order, including, but not limited to:

(a) The date for submission of a revised student reassignment plan;

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* Wayne State University will, for example, assist in the court's requirement for in-service training. Other institutions have offered to assist in the court's requirements for research, study, and teacher training. Grants are available for curriculum and program development.



(b) The date for commencement of the instructional program for teaching reading and communication skills in all Detroit Schools;

[13]

(c) The date for creation of four vocational centers and two technical high schools;

(d) The date for commencement of in-service training;

(e) The date for commencement of bi-lingual and multi-ethnic programs;

(f) The date for commencement of counseling and career guidance programs;

(g) The date for commencement of non-discriminatory testing programs;

(h) The date for commencement of the co-curricular program;

(i) The date for submission of a plan for school closings and new school construction; and

(j) The date for submission of an analysis of all required expenditures.

IT IS FURTHER ORDERED that:

(1) The injunction heretofore issued enjoining expenditures for construction shall be and hereby is set aside;

(2) The defendant Detroit Board of Education shall undertake a comprehensive construction and renovation program, PROVIDED, HOWEVER, that the Board shall, prior to undertaking any and all expenditures for [14] construction, obtain approval of the court and PROVIDED FURTHER that such construction and renovation program shall, in the order following:

(a) Further desegregation;

(b) Implement any one or more of the provisions of this order; and

(c) Tend to equalize facilities.

IT IS FURTHER ORDERED that:

(1) The court's jurisdiction in this cause shall be continuing and the parties hereto shall be subject to change orders filed pursuant to the court's jurisdiction;

(2) All previous orders of the court, not inconsistent with the Memorandum Opinion shall remain in full force and effect unless amended or modified by the court in furtherance of its jurisdiction or upon the request of any party for clarification and/or supplementation pursuant to a motion so entitled;

(3) This court's order of May 21, 1975, regarding the purchase of 150 busses is reaffirmed. The defendant Detroit Board of Education is directed to begin utilizing these buses for all Detroit school children requiring transportation, including transportation to relieve overcrowding, to accommodate dangerous crossings and to accommodate excessive distances. Where such busses are available, no Detroit student shall be transported in chartered busses.

[15] IT IS FURTHER ORDERED that:

The defendants Detroit Board of Education, the General Superintendent therefor, his administrative staff, the Regional Boards and each member thereof, the State Board of Education and each member thereof, the Superintendent of Public Instruction, the Attorney General, the State Treasurer, their officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them who receive



notice of the court's orders are HEREBY ORDERED to implement the provisions of said order and to comply with each provision contained therein.

ROBERT E. DeMASCIO /s/
Robert E. DeMascio
United States District Judge

Dated: August 15, 1975

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| **Ronald BRADLEY et al., Plaintiffs, v. William G. MILLIKEN, Governor of the State of Michigan, et al., Defendants.** | **Civil No. 35257.** |

United States District Court,
E. D. Michigan, S. D.

Nov. 4, 1975.

## MEMORANDUM AND ORDER

DeMASCIO, District Judge.

At the inception of the remedial phase of this litigation, the court directed the parties to submit plans to effectively establish a unitary school system. After affording the parties approximately 30 days to attempt to resolve their differences, the court conducted extensive [944] hearings on the plans submitted.[1] The parties were persistent in their different views of what constituted desegregation. The plaintiffs adhered steadfastly to the view that desegregation required that the racial composition of every school in the system conform to within 15% of the system-wide racial ratio, that other considerations furthering integration were not relevant toward the formulation of a desegregation plan, and that existing practicalities at hand were not relevant. The

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1. The hearings extended from April 29 to June 27, 1975, consuming approximately nine weeks.

defendant Detroit Board of Education contended that a just and feasible plan must give consideration to the "practicalities of the situation" such as the racial ratio existing in the school community, which is predominantly black by wide margins, shifting population trends and demography, the financial plight of the school district, the need for school, neighborhood and community stability, and assurances that the district be able to provide optimal educational opportunities for all children, and that an effective desegregation plan should not look merely to the present, but should desegregate "now and hereafter" by preventing resegregation.

Upon completion of the hearings, the court carefully examined the plans together with all the evidence submitted. We concluded that both plans were too rigidly structured because of adherence to fixed racial ratios (which was found to be not only undesirable but constitutionally infirm), that both plans failed to properly weight the essential "practicalities of the situation", that neither plan exhausted alternatives in light of such practicalities, and that neither plan appropriately balanced the equitable burdens with the desegregative results achieved. On August 26, 1975, we directed the defendant Detroit Board to prepare a revised plan, which was submitted on September 19, 1975. On October 8, 1975, we directed the Detroit Board to re-evaluate various aspects of its September 19, 1975 plan, and the Board again submitted a revision on October 21, 1975.

Thus, this is the third occasion the court has had to carefully examine every detail of the Detroit Board's desegregation plan. The sole purpose of our detailed examination has been to devise a "just, feasible and equitable" desegregation plan pursuant to a United States Supreme Court mandate that we formulate a "decree directed to eliminating the segregation found to exist in the Detroit city schools. . . ." We have found that the revised plan closely parallels the court's guidelines. There are instances in which the Detroit Board employs parameters at



variance with the guidelines, but we have said that the Detroit Board may do so, provided the plan itself discloses that the additional effort will have a salutary affect upon desegregation (Memorandum Opinion, August 15, 1975, p. 121), since a cooperative board should be afforded discretion to weigh the practicalities at hand. This does not mean, however, that the Detroit Board is free to charter a course beyond the guidelines to accommodate individual philosophies or regional goals. We have been careful to ensure that where the plan exceeds the court's guidelines, the plan discloses the practicalities considered and the reasons for affording varying weight to those practicalities.

We are satisfied that the revised plan, which we today order implemented with some modifications made by the court,[2] is an effective and equitable desegregation plan within the constitutional guidelines that we have provided. The plan exhausts alternatives to two-way bussing, such as re-zoning and creation of satellites, and does not adhere to rigid racial ratios. Rather, the plan is flexible, as it permits variations derived by weighing the practicalities at hand and places into equitable balance the objectives sought and the results to be [945] achieved. (Memo. Op., p. 87).[3] The plan recognizes the need to preserve walk-in schools in integrated neighborhoods, and contains the flexibility needed to encourage stability in integrated neighborhoods. The flexibility of the plan is further demonstrated by the fact that where reassignments are made at the elementary level, the students involved are assigned to a walk-in middle school or high school. Moreover, the plan provides for rotation of classes between paired schools to lessen or equalize the transportation burden (Memo. Op., pp. 91, 93). Most important, the

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2. We have concluded that a desegregation plan must be implemented during the Winter Term 1976. Time considerations will not permit another request for re-evaluation of the modifications mandated.

3. Our guidelines discard the use of rigid ratios in the desegregative effort. We suggest a 50-50 racial ratio as a starting point, but permit deviation therefrom depending upon the practicalities surrounding each individual school.

plan avoids transportation serving no desegregative purpose, such as bussing black children long distances to attend predominantly black schools. The court is satisfied that wherever transportation of white or black children is ordered, it serves a desegregative purpose. Thus, the plan is sensitive to the educational aspirations of the children and parents of Detroit who are not themselves responsible for the invidious violations exposed during the liability phase of these hearings.

We do not mean to imply that the plan, even with the modifications made by the court, is perfect. Future events may well dictate that other selections are more desirable; practicalities will change. But we are confident that, with the continued guidance of the court, the Detroit Board will remain responsive to changing practicalities. We are reminded that, even after a finding of segregation, it is the affirmative duty of the local school board to repair the effects of segregation. We found the Detroit Board is willing to assume its constitutional duty to do so (Memo. Op., p. 65) and have taken into account that the "good faith conduct on the part of any litigant in any court, especially a court of equity, and more particularly, in the sensitive area of desegregation, is a vital element for appropriate consideration." [Memo. Op., p. 120, quoting *Montgomery County Board of Education v. Carr*, 400 F.2d 1, 2 (5th Cir. 1968).] Once the Detroit Board has accepted its responsibility, the court's only remaining obligation is "to determine whether the structure designed by the school board will house a unitary system." (Memo. Op., p. 121.) We are confident that the Detroit Board will continue to seek an equitable balance of the essential "practicalities of the situation."

We have heretofore concluded that an appropriate plan must consider legitimate community concerns. Thus, it is constitutionally permissible for the Detroit Board to consider practicalities that truly exist and are not contrived to defeat desegregation. Such legitimate concerns deserving weight include the undesirability of forced student reassignments achieving only negligible desegregative results, the undesirability of bussing black children to predominantly black



schools, the rapidly shifting population trends occurring naturally in the school district, the decrease in overall student enrollment coupled with the persistent increase in black student enrollment, the predominantly black racial ratio, the depressed economy of the community created by the highest rate of unemployment in the nation, and the financially crippled school district's inability to improve its financial position (Memo. Op., p. 4). The Detroit community is thus assured that the court's guidelines and the plan implemented pursuant thereto fully weigh all the "practicalities of the situation" and at the same time make "every effort to achieve the greatest possible degree of actual desegregation." *Davis v. School Comm'rs of Mobile County*, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577 (1971).[4] We have been attentive to the [946] obvious need for residential stability (Memo. Op., p. 2). We have said and again emphasize that " . . . an effective and feasible remedy must prevent resegregation at all costs. . . . In a school district that is only 26% white,[5] a remedy that does not take account of the possibility of resegregation will be short-lived and useless if that percentage of whites further decreased." (Memo. Op., p. 4.)

We are fully aware of the community concern for the hardships involved in forced reassignments, particularly through the use of school bussing. This awareness influenced the court to scrutinize every school involved in the plan carefully to ascertain that the desegregative results achieved warranted the burdens imposed. For example, the court

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4. The plan tracks the court's guidelines as well as might be expected. The school authorities transport approximately 22,000 students and provide walk-in schools for an additional 6,000 students. It is important to emphasize that the school district has always transported 14,000 students to relieve overcrowding and to avoid hazardous crossings. By more efficient use of the transportation already existing, the plan realizes a net gain of 8,000.

5. The 1975 fourth Friday count discloses that this figure is now 23% white.

rejected the reassignment of students from the Grayling or Greenfield Union Schools, finding that, although each school was slightly under the 30% black figure that the court used to define a desegregated school, "[t]he presence of other minorities in significant numbers is a permissible practicality to be taken into account when deciding whether a school should be included in reassignment plan." Memorandum and Order of October 8, 1975, at p. 5. In another instance, the court objected to the pairing of the Beard and Wingert Schools because, even though substantial desegregation would result, we found it inequitable to pair Beard with a school as far away as Wingert while other schools adjacent to Beard (Higgins, Harms and Bennett) were paired with schools located much closer to their neighborhood. The court referred to its finding that "there should not be great variances in the transportation burden falling on adjacent areas because such variations will influence residential patterns." (Memo. Op., p. 92.) To further illustrate the close scrutiny the court gave to each aspect of the reassignment plan, we were able to eliminate much needless transportation in Region 7 by rejecting a Board proposal to convert the Wayne Elementary School (92% white) to a middle school and transport Wayne students to Burbank School (97% white). We reminded the Detroit Board that "the bussing of white children to predominantly white schools . . . serves no desegregative purpose and is no less objectionable [than the bussing of black children to predominantly black schools]." Memo. and Order of October 8, 1975, at p. 5.

While some members of the community may be displeased over some of the reassignments the court has deemed essential, it is our hope that their burden will be made easier to bear by the knowledge that the court has given full consideration to every reassignment and has permitted the reassignment of students only where it has concluded that the desegregative results achieved justify the burdens imposed. Moreover, Detroit citizens can be further assured that the court has taken steps to improve the quality of education and has not permitted transfers where the receiving school is not comparable in all respects to the



sending school. With assurances that the court and the Detroit Board have carefully weighed the practicalities, we are confident that the Detroit community will recognize that what is implemented today is constitutionally mandated. The citizens of Detroit know that the law must be obeyed.

We have said that a successful desegregative effort emphasizing quality education will require the cooperation and the support of the entire community. We know that Detroiters have always volunteered community support to advance worthwhile causes. We know of no greater cause than rejuvenating the vitality of the city's schools. A vibrant school system will assure stability for city and community alike. Having assured the Detroit community that the court has weighed the practicalities of the situation fully, we are confident that the plan will receive the cooperation and support of the entire community. When [947] cooperation and support are granted freely, the plan will succeed. The support of the community will afford the Detroit school system an opportunity to make a fresh start. This support will enable the school system to fulfill the community aspirations for desegregated quality education for all children. It is our belief that the guidelines announced will create a unitary school system of which Detroit citizens can be proud. A quality school system will evolve that is concerned not with black children nor white children, but just children.

Accordingly, IT IS HEREBY ORDERED that the defendant Detroit Board of Education implement and cause to be implemented the desegregation plan on or before the beginning of the Winter Semester, 1976;

IT IS FURTHER ORDERED that the defendant Detroit Board of Education shall direct its Interim General Superintendent to formulate a program for the implementation of the desegregation plan, and that the defendant Detroit Board of Education shall submit to the court, on or before December 19, 1975, the program as formulated for the appropriate implementation;

IT IS FURTHER ORDERED that, pursuant to the October 2, 1975 order of the U.S. Sixth Circuit Court of Appeals, the parties hereto shall appear before this court on December 1, 1975, at 9:00 A.M., for an apporpriate order concerning school closings proposed on pages 10-11 of the defendant Detroit Board of Education's submission of October 21, 1975.

## APPENDIX

The plan has been developed from the Detroit Board of Education's submissions of September 19 and October 21, 1975. We recognize that the successful implementation of a desegregation plan will require solutions to a variety of problems and that the rapidly shifting population trend may create new problems.

Because the school district reschedules classes each semester as a part of its regular practice, we do not see any difficulty in implementing the plan at the start of the winter semester at the lower grade level.[1] Moreover, since many high schools already enroll the ninth grade, we do not see many problems caused by the reassignment of ninth graders pursuant to the court's order to change junior high schools to grade 6-8 middle schools. However, desegregation of the high schools poses a number of problems not faced by elementary and middle schools. Since school programs become more specialized at higher grade levels, special provisions must be made for the phasing in of the plan at the high school level. Reassignments occurring during the school year may pose an especially difficult burden for high school students because of the possibility that the receiving high school will not have the same educational programs as the sending high school.

While there is no easy solution to the problem of desegregating the high schools, the Detroit Board may wish

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1. It is difficult to ascertain from the plan the precise pairing procedures employed. In Region 2, for example, we have designated schools where rotation pairing is appropriate (see p. 13 of the Plan).



to consider a change in the method of high school assignments that will facilitate desegregation. While the Detroit Board makes assignments of students to high schools that are dependent upon middle school or junior high school assignments, many school districts structure high school attendance zones without regard to junior high school assignments. Such a method of assignment possesses greater flexibility and might be of aid to desegregation. The Detroit Board's present method of making high school assignments places unnecessary constraints on desegregation, and does not minimize student travel to high school. The Detroit Board may wish to consider making high school assignments on the basis of elementary attendance zones alone, with zones possibly being split where it proves advantageous for desegregation or convenience of students. [948] This recommendation is particularly appropriate for Regions 4, 6 and 7. Moreover, where high school students are reassigned for desegregative purposes, fairness would require that they be provided transportation where they are assigned to a high school more than two miles from their residence.

The Detroit Board of Education should require that its staff review the attached plan in detail to assure that it is just and feasible. The responsibility remains with the Detroit Board to notify the court if features in the plan require revision because of changing practicalities. In that event, the Detroit Board should proceed by filing a petition for revision of any specific school assignment for the court's consideration.

Finally, the Detroit Board of Education shall establish and publicize an information center that is adequately equipped and staffed to provide a source for dispensing accurate information concerning the desegregation plan to the public and school community. In addition to responding to inquiries, the information center should have a mechanism for accepting suggestions and constructive criticism from parents and other members of the community.

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **RONALD BRADLEY, et al.,**<br>**Plaintiffs,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,**<br>**Defendants.** | **Civil No. 35257** |

## JUDGMENT

This cause came before the court on submissions of desegregation plans submitted by the defendant Detroit Board of Education, and this court having entered its Memorandum and Order on November 4, 1975:

IT IS ORDERED AND ADJUDGED that the defendant Detroit Board of Education implement and cause to be implemented the desegregation plan attached to the court's Memorandum and Order of November 4, 1975, the plan for vocational schools as set out in the court's Memorandum and Order of November 10, 1975, the uniform code of conduct attached to the court's Memorandum and Order of October 29, 1975, and the monitoring commission as set forth in the court's Memorandum Order of October 16, 1975.

Dated at Detroit, Michigan, this 20th day of November 1975.

ROBERT E. DeMASCIO /s/
Robert E. DeMascio
United States District Judge

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **RONALD BRADLEY, et al., Plaintiffs,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al., Defendants.** | **Civil No. 35257** |

## MEMORANDUM, ORDER AND JUDGMENT

(a) *Introduction:*

On August 15, 1975, we entered a partial remedial judgment in the Detroit school desegregation case, which has been in litigation since 1970. On that date, because neither party had submitted an acceptable desegregation plan, we enunciated guidelines for altering attendance patterns and decreed that the implementation of 11 educational components was necessary to eradicate the effects of past segregation.[1] We did not create a transportation plan, but rather we left to the defendant Detroit Board of Education the burden of fashioning a plan consistent with the announced guidelines. We explicitly held that it was the Detroit Board's legal obligation to formulate an acceptable plan, not the court's obligation. We subsequently examined the revised plans that the Detroit Board submitted and, only when we were satisfied that the revised plan conformed to

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1. See 402 F. Supp. 1096, 1118.

our guidelines, ordered a transportation plan [2] into effect.[2] Just as the August 15, 1975 order was not specific about the precise details of the transportation plan, it was likewise unspecific about the details of the educational components. We also provided that the details of these components were to be worked out between the defendants and the court. The August 15, 1975 order set dates for submission of detailed programs to implement essential educational components; some of the components were to be developed solely by the Detroit Board, while others were to be developed jointly by the Detroit Board and the State Board of Education. We did, however, clearly indicate that, since the Detroit Board and the State Board of Education participated in practices that created a racially segregated school system, both would be required to participate in effecting a remedy.[3]

Today, we enter our final judgment in this matter. However, we emphasize that today's judgment and order deal with nothing new. Rather, today's judgment merely mandates implementation of those matters forecasted in our August 15, 1975 order. Pursuant to that order, the Detroit Board has submitted proposals for the educational components. Their proposals have been carefully reviewed by the court, and in several instances proposals were returned to the parties for suggested revisions. In some instances, [3] we have had the benefit of a critique submitted by the Executive Committee of the court's Monitoring Commission. Mindful that this remedial decree will be paid for by the taxpayers of

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2.

While the revised plans were under consideration, the plaintiffs requested a hearing to document their objections. However, it was our view that a hearing would not be appropriate. The adversarial phase of this litigation ended with the August 15, 1975 partial judgment; the issue of the conformance of the revised plan with our guidelines was an issue solely between the defendant Detroit Board and the court. Thus, our failure to include plaintiffs in the process of shaping the details of the transportation plan was not motivated by indifference to their views, but rather reflected the fact that the adversarial phase of this litigation had ended. Plaintiffs' review of the validity of the guidelines was on appeal. (See also our Memorandum and Oder, dated October 31, 1975.)

3.

See *Bradley* v. *Milliken*, 338 F. Supp. 582, 588-589, *aff'd* 484 F.2d 215, *rev'd on other grounds*, 418 U.S. 717 (1974).



the City of Detroit and the State of Michigan, we have been careful to order only what is essential for a school district undergoing desegregation. While the details of the proposals were submitted by the parties, the court has examined every detail in each proposal to ensure that the components we order are necessary to repair the effects of past segregation, assure a successful desegregation effort and minimize the possibility of resegregation.

(b) *Vocational Centers:*

To illustrate the court's attentiveness to details prior to fashioning this remedial decree, we shall briefly trace the way in which the vocational education component came to be ordered into effect. Our August 15, 1975 order directed that the Detroit Board and the State Board of Education jointly prepare and submit a plan for the construction and implementation of five vocational centers. We examined the plan submitted, conducted in-chamber conferences with the parties, suggested revisions, and, on November 10, 1975 ordered the revised plan[4] into effect. That order directed the Detroit Board and the State Board to proceed jointly to identify and acquire suitable sites for five area vocational centers and to take all steps necessary to complete their construction as promptly as circumstances permitted. The intent of the order, of course, was to have the defendants jointly create a vocational education system. We provided that [4] the Detroit Board's share of construction funds was to be derived from its bonding capacity. Thus, that order adopted the revised plan and spelled out the rights and responsibilities of the defendants in connection therewith. However, the parties responded as if the adversarial phase of this litigation had not ended. The state filed a motion seeking a modification of that order which, in effect, would exclude it

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4.

The original vocational education plan was submitted on August 29, 1975; a revised plan was submitted on October 3, 1975.

from participation in establishing the five area vocational centers.[5]

Reluctantly, on February 17, 1976, we afforded the state an opportunity to be heard on its motion. During the hearing, it became apparent that the parties were not concerned with how the court-ordered remedy would be implemented, but were attempting instead to re-litigate the responsibility of each to participate [5] in the remedy. They sought to continue an adversary proceeding that had long since been concluded. Accordingly, we interrupted the hearings and adjourned for an in-chamber conference. At that conference, on February 19, 1976, we reminded the defendants that each had been found guilty of *de jure* acts of segregation, and that each must bear a share of the remedial burden. We further reminded them that it was time to abandon adversary positions, that it was time to renew their concern for the educational welfare of Detroit's school children, that the

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5.
Of course, the defendant Detroit Board responded with other motions and briefs. The state contended, as it has throughout this litigation, that because there had been no finding of a constitutional violation by the state defendants with regard to the presence or absence of vocational centers, a remedial decree ordering them to participate in creating vocational centers would exceed the nature of the constitutional violation contrary to the holding of *Swann* v. *Board of Education*, 402 U.S. 1 (1971). We have addressed and rejected this argument on many occasions. We pointed out that the state's argument distorted the holding of *Milliken* v. *Bradley*, 418 U.S. 717 (1974), wherein the Supreme Court used the language from *Swann* cited by the state defendants to reverse a remedial decree that involved *parties* against whom no constitutional violation had been alleged or proved. Here, on the other hand, there has been a positive finding of segregation against the state; we do not believe that *Swann* or *Milliken* prevents this court from utilizing the traditional range of federal equity powers to create a unitary system and to repair the damaging effects of past *de jure* acts of segregation. In our August 15, 1975 Memorandum Opinion, we found that "while it is true that the delivery of quality desegregative educational services is the obligation of the school board, nevertheless this court deems it essential to mandate educational components where they are needed to remedy aspects of past segregation . . . ." (See 402 F. Supp. 1096, 1118.) Thus, while the state has not been adjudged liable specifically for its failure to create vocational centers, because we have deemed that the creation of vocational centers is necessary to repair the effects of past segregation, such a remedy is not beyond the scope of the adjudicated violation. *Louisiana* v. *United States*, 380 U.S. 145, 154 (1965).



survival of the city's school system was the responsibility of the state defendants as well as the Detroit Board, and that the persistent assertion of adversary positions, seeking to minimize the participation of each, did not contribute to a solution to the chaotic problems that exist in the Detroit city schools. The parties responded admirably.

As a consequence of our encouragement, the State Board of Education and the Detroit Board of Education entered into a stipulation providing that each defendant board share equally the burden of creating five area vocational education centers.[6] We are reminded that this stipulation represents the first time in almost six years of litigation that the parties were able to agree to anything with respect to the remedial aspects of this case. We are hopeful that this stipulation will mark the beginning of a new resolution by each party to accept responsibility for eradicating every vestage of past segregation for the benefit of all children, black and white. It is also our hope that plaintiffs, too, will see the wisdom in compromising differences that may still exist. Surely, plaintiffs must know that the "practicalities [6] of the situation" taken into account in our opinion were, indeed, essential to preserve the Detroit city school system. See 402 F. Supp. 1096, 1102. If greater desegregation is possible in a school district now 76% black, it can better be achieved through compromise than through litigation.[7] How long must the present board bear the responsibility for past invidiously discriminatory acts committed by board members who have long since departed? We are reminded that as early as 1970, the Detroit Board came forward with a plan to desegregate. That plan would have been implemented were it not for the intervening passage of Act 48 by the Michigan Legislature.

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6.
That stipulation and the resolution passed by each board are attached as an appendix and incorporated as a part of our judgment.

7.
From the recent statistical data available, it is apparent that in September 1976 the Detroit school system will be 80% black. In the Atlanta school district, the plaintiffs recognized the practicalities of the situation existing in that district and entered into an agreement to achieve maximum desegregation rather than continue litigation. See *Calhoun* v. *Cook*, 362 F.Supp. 1249 (N.D. Ga. 1975), *rev'd on other grounds* 487 F.2d 680 (5th Cir. 1973).

(c) *Uniform Code of Student Conduct:*

To further illustrate the court's attentiveness to details prior to fashioning our remedial decree and our concern with the Detroit Board's implementation efforts, we briefly trace the implementation to date of the Uniform Code of Student Conduct. As a consequence of our inquiry during the February 19, 1976 conference on vocational education, it became apparent that the Detroit Board was not in compliance with our October 29, 1975 order to implement the code of conduct. It was on that date that we ordered the Detroit Board to implement the code in all schools in the district at the start of the 1976 winter semester, to print the code in an appropriate and attractive form, to distribute the code to all students and parents in the Detroit school district, to post the code on the bulletin board in every [7] school, to prepare uniform reporting forms for every school, to assure uniform reporting of all infractions, and to devise an appropriate in-service training program for all school personnel. Notwithstanding these directives, the Detroit Board only printed 100,000 copies of a partial code, making impossible complete and uniform distribution to the 247,000 students in the system. As a supplement to this printing, the Detroit Board distributed a "highlights sheet" that omitted the introduction, critical portions of the section entitled "Disciplinary Actions" and several appendices, which distorted the code and directly contravened the order.

We gave the Detroit Board ample time to properly plan for and implement this component. As early as July 3, 1975, we expressed our view that this component required a high priority. In our August 15, 1975 Memorandum Opinion, we agreed with plaintiffs that:

> "[n]o violence whether against person or property, will be allowed to impede the implementation of the desegregation process. Both students and teachers must feel secure in their person and in their ability to perform their respective functions without fear of undue and unnecessary disruption." (402 F.Supp. at 1142.)



Indeed, the experiences in the Detroit schools since the implementation of the desegregation plan, on January 26, 1976, should clearly demonstrate to the Detroit Board that uniform application of a code of student conduct is essential in a school system undergoing desegregation. We reminded the Detroit Board that without uniform application of the code, it cannot discharge its responsibility to create and maintain an appropriate educational environment. Without proper discipline, a school system [8] cannot generate academic success, self-respect or self-control. Studies have established that behavioral patterns improve with academic achievement. Thus, the success of a school system is directly related to its demands for acceptable behavioral and academic achievements. A school system that neglects to make uniform demands upon its students, demeans its enrollment. That educators and board members do not insist upon uniform academic and behavioral standards is equally degrading. Such a condescending attitude instills in black students the feeling that they are unworthy of achieving behavioral and academic standards, that a system that is predominantly black need not maintain discipline when white counterparts are not present, and that black students are incapable of shaping their own destinies or meeting disciplinary standards. A school system that relies on locked classroom doors to deliver educational services cannot succeed.

We also have indicated our concern that the code be administered in keeping with the due process provisions enunciated therein. We required that the Detroit Board ascertain that administrators submit complete and detailed reports of all student infractions and disciplinary procedures that followed, giving rise to the need for uniform reporting forms. We advised the Detroit Board of our awareness that some administrators have in the past embellished or toned down behavioral infractions. We made known to the Detroit Board our view that fair and uniform enforcement of the code could not be achieved without an appropriate in-service training program. We required that the Detroit Board devise an

in-service training program to familiarize all members of the staff with the content of the code and to train them to ensure uniform application and [9] reporting. The Detroit Board has not developed or even planned such an in-service training program. As a consequence, the code is not applied uniformly in all regions; neither has the code even been adopted by all regions.

Because it was not until late in the school term that the court was made aware of the haphazard manner in which the code of conduct has been implemented, we elected to delay hearings designed to assess the responsibility for this result. However, we remind the Detroit Board that it is an ongoing responsibility of the Monitoring Commission to scrutinize closely the implementation of the code. Should the irregular pattern of the implementation of the code itself or neglect in developing the in-service training program that we ordered in connection therewith continue into the September 1976 school term, the time will be more appropriate to hold hearings to determine whether the responsibility for the contravention of the court's order falls upon members of the Central Board of Education, the Central staff, the Regional Boards of Education, or Regional staff members. We take note that due to the structure of the regional system, the school system is still subject to varying philosophies and policies that can have a divisive effect on other educational components, as well as the uniform code of conduct.

(d) *Detroit's Regional System:*

This school system's regional structure evolved from the provisions of Act 48 of the Public Acts of 1970 (MCLA 388.171, *et seq.*). It was that Act that divided the city into eight regions, made provisions for drawing regional lines, provided for five-member regional boards, reduced the central board membership to [10] five and provided for membership on the central board for the highest vote-getter in each region, thus creating a central board controlled by members who are not accountable to voters city-wide. When the Michigan legislature was considering the passage of Act



48, the school system had been attempting to decentralize pursuant to the mandate of Public Act 244 of the Public Acts of 1969. The then Detroit Board of Education, already on record favoring decentralization, insisted that the regional boundary lines when drawn under the provisions of Public Act 244 serve to desegregate the school system as well as decentralize.

The Detroit Board's effort to include desegregation in the decentralization process met with widespread opposition. A large segment of the white community would not accept decentralization that included desegregation if it would require sending children beyond their neighborhood schools. On the other hand, a vociferous group in the black community opposed to integration insisted that decentralization provide for black control over black schools, thus injecting the concept of community control over schools in the system. These conflicting concepts brought about a near community confrontation. Under mounting community pressure, the Michigan legislature passed Public Act 48 as an attempt to compromise these competing community goals.[8] Thus, the Detroit school system functions today under legislation conceived in controversy and without public hearings, legislative analysis, clearly defined goals for decentralization or a consensus concerning the most efficient way to administer a decentralized system.

[11] The remedial hearings gave the court an occasion to examine the educational system created by that ill-conceived act. In our Memorandum Opinion, we observed that:

> The present structure . . . frustrates the achievement of educational goals common to all schools throughout the

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8. See Pindur, *Legislative and Judicial Roles in the Detroit School Decentralization Controversy*, 50 Journal of Urban Law 53 (1973); Grant, *The Detroit School Case: A Historical Overview*, 21 Wayne Law Review 851; LaNoue & Smith, *The Politics of School Decentralization*, (Chapter 7), Lexington Books, D.C. Heath & Co.

> system. The system is no longer a top-to-bottom command educational organization . . . Any program designed to advance the interests of the entire system can be frustrated by any one of the eight separate regions. An edict from the top can be diluted so that by the time it reaches the lower level it has little or no impact. * * * The eight regional chairmen acting in conjunction can effectively strip the central board of all its [administrative] power. * * * Thus, Detroit voters have been bequeathed no more than a vote for a regional board in exchange for the central board. Nothing further toward achieving community control has developed in five years of decentralization. The political institution that has developed has cast a heavier financial burden upon the people of Detroit without resulting in a greater voice . . . in the operation of the school system. (402 F.Supp. at 1128.)

The structure created is chaotic and incapable of effective administration. Just as leadership and responsible administration in the process of implementation downward are impeded, so too are reporting and accountability upward similarly impeded. Regional administrators must serve two opposing masters; they are torn between accepting direction from the central administration and the regional boards that control their continued employment. As a result, the general superintendent has little direct authority. He too must respond to a board that is controlled by regional chairmen and must, of course, display the same deference as regional personnel. The ultimate result is indecision, indirection, inability to make critical decisions, and a total absence of central staff leadership or guidance.

[12] We have noted recently that the central administration has not even been able to acquire accurate enrollment figures. This is due not only to the lack of top-to-bottom command but also to the fact that financial assistance to the regions is based upon school enrollment figures, rather than local public school census data as it formerly was. Because to pad or



obscure regional enrollment figures is in the interest of local regional boards, we have observed the regions become so bureaucratized that they dare to resist the imposition of controls, direction or demands from without. We have already said: "Rather than decentralizing to disperse bureaucratic authority, the Detroit Schools have developed another completely bureaucratized political institution: the regional boards of education." (402 F.Supp. at 1127.)

As a further consequence of the regional structure, the people, to whom the school system belongs, are unable effectively to control the system. At the inception of decentralization, only the regional superintendent and his or her assistant were hired by local regional boards. Today, however, each regional bureaucracy can distribute local board patronage to fill as many as 15 administrative positions.[9] It is apparent that the local boards have diverted resources that would otherwise have been available for educational purposes to build new offices and other facilities to house this administrative overload. Studies have not been made available to determine the amount of duplication between regional offices and the services provided by the central [13] staff or accurately to estimate the cost of this chaotic structure. However, our conservative estimate is that its costs to Detroit citizens exceeds $8 million annually.

In addition to the administrative chaos, we know of no other school system that is so enmeshed in politics. In the up-coming election, the people of Detroit must choose

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9. For example, Region One has three regional assistants and an administrative assistant (to whom does not appear). In addition, there is a "regional physical plant manager", a "public budget administrator", a "personnel administrator", a "school-community relations director", a "Chapter III administrator", a "Title I administrator", an "achievement specialist", a "school social worker", and "attendance center" and a "psychologist" — a total of 15. The other regions are comparable, having between 13 and 16 persons. See 1974-1975 Directory of Detroit Public Schools.

among 96 candidates. Such a proliferation of positions and candidates creates great difficulty in eliminating the unqualified and those incapable of offering meaningful leadership and in weeding from the candidates those who seek positions on the board solely to gain an opportunity for higher political office. A candidate is assured a seat on the central board and an opportunity to gain city-wide attention merely by gaining the most votes in a region. The ultimate result may well be a board of education consisting of members possessing no experience in education. Qualified educational leaders are deterred from seeking positions on a board that is dominated by political maneuvering.

We have observed that like other political officers, regional board members tend to shy away from difficult decisions that might displease various segments among their constituents. For the past several months, because of the impending elections, the system has been suffering from political paralysis. Rather than devoting themselves to the educational system and the desegregative process, [10] board members are busily engaged in politics not only to assure their own re-election but also to defeat others with whom they disagree. Through it all voter apathy is encouraged by the [14] regional system itself, which creates a central board controlled by members who are not elected by a direct vote.

The system has failed because it is based on the unrealistic expectation that representatives who serve only regional interests can decide issues that effect the school system as a whole. The Detroit school system has lived with this experiment for six years. In our view, the time has come for the Michigan legislature to take a fresh look at the structure created by Act 48. This structure has left Detroit with an inefficient bureaucracy at a price it can ill-afford.

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10.
For example, we have seen a Region Seven Board Member who, wearing two hats, thinks it conscionable to take an oath of allegiance to the educational system and at the same time finds no conflict with that oath to advocate boycotting schools undergoing desegregation.



[15] (e) *Remedial Educational Components:*

We have indicated that the judgment we enter today will provide for quality education components we think essential to a system undergoing desegregation. We find it necessary to comment upon some of those components.

1. *Reading* — On December 4, 1975, this court ordered into effect a comprehensive program of reading instruction for the Detroit school system. In that order, we reiterated our previous findings that such a program is necessary to eradicate the effects of past segregation, and thus deserves top priority in a school system undergoing desegregation. We approved a plan that had been submitted pursuant to prior court orders, which plan included, *inter alia,* in-service training of reading instructors, the necessary administrative staff to supervise a comprehensive reading program, and the evaluation, monitoring, record-keeping and reporting necessary to ensure the successful functioning of such a program.

Reports submitted by the Reading Subcommittee of the Monitoring Commission indicate that progress on implementation of the reading program is well under way. The Commission has also submitted several recommendations with which we concur, and which we order into effect today. First, the Commission recommended amending the reading program to provide the means to deal with the discovery of perceptual difficulties among school children, a problem that often leads to learning difficulties, behavioral problems, and ultimately, failure in the school system. The Commission's recommendation was that the program provide adequate professional vision and hearing screening, and in-service training enabling [16] teachers, first, to determine, whether such screening is necessary for students and second, to apply appropriate teaching strategies to accommodate perceptual difficulties. The Commission's other recommendations included requiring the Board to specify how the mass media and community components will be utilized to reinforce the reading process, expanding the plan so as clearly to specify program design as it relates to program objectives, and

providing a process by which data from the reading program will be collected, assessed, and brought to the Monitoring Commission on a regular basis. We likewise find these recommendations valuable and order them into effect today.

2. *In-Service Training* — Throughout the course of this remedial litigation, we have stressed the importance of in-service training to enable teachers, administrators and staff to function in a desegregated setting. The importance of such in-service training is illustrated by the fact that several components that we have ordered include specific provisions for in-service training to enhance delivery of the quality education offered by those components.[11]

In our August 15, 1975 Memorandum Opinion, we observed that "[a] comprehensive in-service training program is essential to a system undergoing desegregation." 402 F. Supp. at 1139. We pointed out that teachers' attitudes toward students are often affected by desegregation, and that these attitudes can play a critical role in the atmosphere of a school and can affect a student's academic performance.

[17] On September 19, 1975, we received the Detroit Board of Education's proposed in-service program. We have examined this proposal and find that it conforms with the requirements of our August 15, 1975 memorandum and order. Accordingly, this program is today ordered into effect. We note that the in-service training dealt with in this program is not designed to aid in the implementation of other components in the desegregation plan, but is designed to aid in the desegregation process itself.

3. *Counseling and Career Guidance* — In our August 15, Memorandum and Order, we observed that:

> "School districts undergoing desegregation inevitably place psychological pressures upon the schools affected. Counselors are essential to provide solutions to the many problems that result from such pressure." (At p. 113.)

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11. For example, provisions for specific in-service training was made to implement the reading program and the uniform code of conduct. See our Memorandum and Order of October 29, 1975 at page 4.



While the establishment of an effective counseling and career guidance program is the responsibility of every school district, its importance is even greater in a district undergoing desegregation. A comprehensive counseling program can serve as an effective vehicle for repairing the effects of past discrimination. It can aid in the creation of an environment in which children of all races not only attend school together but also learn to understand, respect and appreciate each others' cultures. For this reason, no quality education component is more directly related to the desegregative process than counseling and career guidance. Accordingly, we directed the Detroit Board to submit a counseling and career guidance plan.

After careful examination of the plan submitted, we requested the Counseling and Career Guidance Subcommittee of the Monitoring Commission to submit a critique of that proposal. [18] That critique received the approval of the Commission's Advisory and Technical Professional Staff and Executive Committee. We agree with the observations contained in the March 30, 1976 report of the Counseling and Career Guidance Subcommittee that the Detroit Board's plan is basically sound and reflects pupil needs. The Subcommittee's report wisely points out the need for an in-service training program to ensure successful counseling and guidance services. Further, the report recommends "establishment of a Community Guidance Advisory Committee in each school for the purpose of establishing, discussing and modifying policies with respect to guidance and counseling. Experience has shown that such committees are of great value in gaining and building community support."

Accordingly, the judgment we enter today requires that the Detroit Board's September 30, 1975 submission, as

modified by the Monitoring Commission's Counseling and Career Guidance Subcommittee March 30, 1976 report, be implemented by the joint efforts of the defendants Detroit Board of Education and the State Board of Education.

4. *Testing* — In our memorandum opinion of August 15, 1975, we found that the assurance that tests administered to students are free from racial, ethnic and cultural bias is of great importance to a system undergoing desegregation. Accordingly, we ordered that the Detroit Board of Education and the State Board of Education devise a plan for the implementation of a testing program that eliminates all vestiges of discrimination. Pursuant to court orders, a testing plan was submitted by the two Boards of Education on [19] September 8, 1975. We have examined this plan, and find that it is appropriate for implementation in a desegregated school system.

Accordingly, our order will require that the Detroit Board of Education shall forthwith review all tests currently in use in the Detroit public schools, shall determine whether such tests are "culture-fair," and shall eliminate any racial, ethnic and/or cultural bias inherent in any testing apparatus used in the Detroit school system. The Board shall also review and revise all instructions and procedures currently used for the administration of tests to students, to ensure that said instructions and procedures are non-discriminatory. Moreover, as part of its in-service training program, the Detroit Board of Education shall develop and institute a program to train teachers and administrators in test administration procedures designed to ensure non-discriminatory treatment of students.

The testing plan will also require that the Detroit Board of Education establish an evaluation program to include all students in its schools. This program shall be directed toward evaluating the effectiveness of instructional programs and using evaluations for curriculum development and for planning and policy determinations



by the Detroit Board of Education. The Detroit Board shall also design, develop and institute an objective-referenced capability including the establishment of systemwide performance objectives and the development of objective testing procedures to measure growth for each performance objective.

5. *School-Community Relations* — In our Memorandum Opinion of August 15, 1975, we indicated the importance that we place upon school-community relations and parental involvement. At that time [20] we agreed with the plaintiffs that "an acceptable community relations plan should include provisions for school-community liaison and parental involvement." We added that:

> "[a]n effective community-relations program must develop a partnership between the community and the schools and must cooperate with traditional groups such as PTA organizations and local school advisory boards. There should be a cooperative flow of information from the school to the community and from the community to the school. Open and free discussion and participation in the desegregation process should be encouraged. The school-community relations organization should receive complete encouragement, budgetary support, direct assistance and a free flow of information from school authorities." (Memo. Op. 8-15-75 at 111.)[12]

Thus, our memorandum opinion set forth the guidelines for an acceptable school-community relations (parental involvement) program. We again emphasize that the program must develop a "partnership between the community and the schools." Accordingly, our judgment will require that the

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12. We have indicated that we disapprove of compensation for participation in the school-community relations component. We are not aware that compensation is still offered, and until we are informed otherwise, we do not make compensation a subject of our order.

Detroit Board create and implement the following school-community relations (liaison-parental involvement) component:[13]

A. *Local School-Community Relations Committees*

The school board staff shall organize a local school community relations committee *in each school.* Each committee shall be composed of 20 persons and should reflect the racial composition of the school population as closely as possible. Each committee shall include school personnel, students and representatives [21] of the community. Ten members shall be drawn from the community. While community members may be drawn from organizations such as the local PTA and PTO, at least two such representatives must be unconnected with existing school organizations. Moreover, for those schools to which students have been assigned for purposes of desegregation, at least two parents of those reassigned children must be selected. Each committee shall elect a chairperson and develop procedural rules to govern its sessions.

The purposes of the establishment of local committees are to strengthen communication between school personnel and parents, to encourage parental involvement in school affairs, and to increase understanding among parents from different communities. It is our hope that the committees will aid in resolving conflicts arising from the desegregation process. The local communities must attempt to deal with the concerns of parents whose children are being transported to the school or have been reassigned by boundary changes to aid desegregation. If the local committee is unable to resolve any problem, whether created by desegregation or not, it should seek the assistance of its regional committee or the system-wide school-community relations council.

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13. It is anticipated that the school board will utilize existing programs and adapt those portions of its September 30, 1975 submission that best supplement the program we outline here.



B. *Regional School-Community Relations Committees*

Each region shall organize a regional school-community relations committee to coordinate the efforts of the local committees. The regional committee shall be composed of representatives selected from the local committees. A chairperson shall be appointed by the regional board of education. Meetings shall [22] be held monthly in a facility selected by the regional board, and the regional board shall provide a secretary.

The function of the regional committees is to discuss problems arising in the desegregated schools, such as discipline and academic achievement, to develop programs designed to resolve those problems, and to report to the local committees on the progress achieved by other local committees in solving any of these problems. Such discussions can enable local committees to benefit from each other's experiences. The committee shall further advise the regional board of the overall success of desegregation within the region and forward suggestions to facilitate desegregation to the regional board of education and the city-wide community relations council.

C. *School-Community Relations Council*

A city-wide school-community relations council shall be established to oversee the entire program. The council shall consist of 10 persons selected by the General Superintendent and 10 persons selected by the court's Monitoring Commission. In addition, the council may desire to draw additional members from such organizations as New Detroit, NAACP, the Chamber of Commerce, the League of Women Voters, the Coalition for Peaceful Integration, etc.

In addition to establishing and coordinating programs to be implemented by the local committees, the council shall attempt to resolve, by mediation, conflicts that cannot be resolved by the local or regional committees. It shall actively

seek input from local committees concerning the success of desegregation, and forward both complaints and suggestions for improvement to [23] the central board staff, the parties and the court's Monitoring Commission. It shall further develop and evaluate local and regional committee programs and procedures, develop an agenda for local and regional committees and furnish the committees, school boards, and superintendents with recommendations to avoid duplications and improve the program's effectiveness. The council, with the cooperation of local committees, shall compile reports detailing the efforts of regional and local committees, to be submitted to the court's Monitoring Commission.

The council shall organize the following subcommittees:

(1) *Public Information* — To disseminate to the public accurate information concerning implementation of the desegregation plan, and any other information about the school system of public interest.

(2) *Monitoring* — To evaluate efforts of local and regional committees and provide a monthly report detailing such efforts to the school-community relations council and the court's Monitoring Commission.

(3) *Local Committee Liaison* — To work with local committees to establish and implement programs designed to relieve racial tensions. The subcommittee shall also consider suggestions for improving the desegregation process and handle grievances of the local committees through mediation. Unresolved problems should be forwarded to the appropriate central board personnel and the Monitoring Commission of the court.

(4) *Community Liaison* — To conduct liaison with business, religious, labor, neighborhood and civic groups, [24] develop an understanding of the desegregation plan, obtain assistance in implementing the plan, develop interest in and cooperation with the school system and coordinate the interest and work of such groups as the PTA's and PTO's.



(5) *Parental Involvement* — To encourage and develop programs for local and regional committees designed to generate parental involvement in community schools.

(6) *Executive Committee* — To conduct council business between sessions. This committee shall be composed of the council and subcommittee chairpersons.

The council shall meet in open session at least once a month; agendas of council business shall be prepared in advance. Subcommittees shall be convened twice a month. Necessary secretarial personnel shall be provided by defendant Detroit Board of Education. The Community Relations Service of the Department of Justice will provide assistance to the council and a representative of the Community Relations Service shall attend council and executive sessions.

Further, the executive committee of the council shall meet monthly with the General Superintendent of schools and a representative of the Monitoring Commission to discuss overall progress in implementing this program for school-community relations and the resolution of unsolved problems.

[25] (f) *Conclusions:*

The judgment entered on this date will provide the Detroit Board of Education with sufficient lead time to plan for and implement the components mandated. Besides adding several new components, we have sought to strengthen those programs now in existence. In entering our judgment today, we acknowledge our awareness that this litigation must be finalized. The school system must be afforded the opportunity to devote its energies to perfecting the education of Detroit school children, something it has not been able to do since this litigation began. The entry of our judgment today should also advise a troubled community that the court is indeed concerned with the quality of education in a system undergoing desegregation. The school district must, if

necessary, adjust its priorities to accommodate the cost of the educational components mandated so that the children of Detroit will reap the benefits of a greatly improved educational system. It is our hope that the judgment, together with the numerous orders we have previously entered, will provide the community and the school system with an opportunity to fulfill their educational aspirations.

We recognize that both the community and the school district have demonstrated great patience. Admittedly, the desegregative process has been slow in developing. The transition to a unitary system has required that we proceed with great care and caution, especially in view of the practicalities we have taken into account. We also hope that the Michigan legislature will re-examine Act 48 and provide the Detroit school system with a structure that is administratively efficient, less expensive [26] and less cumbersome, and provides an essential top-to-bottom command, while at the same time providing for community involvement in the decision-making process. We are equally confident that the Detroit community will continue its support for the desegregation effort and that a quality desegregated school system will evolve as anticipated in our August 15, 1975 Memorandum Opinion.

NOW, THEREFORE, IT IS ORDERED that the Detroit Board of Education forthwith print a sufficient number of copies of the Uniform Code of Student Conduct in an appropriate and attractive form for distribution as provided in our October 29, 1975 order;

IT IS FURTHER ORDERED that the Detroit Board of Education forthwith develop and implement an appropriate in-service training program that meets the requirements of our October 29, 1975 order;



IT IS FURTHER ORDERED that the Detroit Board of Education shall, not later than August 4, 1976, submit a report to the court detailing the manner and results of compliance with each and every provision in our October 29, 1975 order.

ROBERT E. DeMASCIO /s/
Robert E. DeMascio
United States District Judge

Dated: May 11, 1976

## APPENDIX

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **RONALD BRADLEY, et al., Plaintiffs,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, et al., Defendants.** | **Civil Action No. 35257** |

**STIPULATION BY DEFENDANT DETROIT BOARD OF EDUCATION AND DEFENDANT STATE BOARD OF EDUCATION WITH RESPECT TO THE ESTABLISHMENT OF VOCATIONAL EDUCATION CENTERS**

Defendant Detroit Board of Education and defendant State Board of Education, by their respective attorneys, hereby stipulate and agree as follows:

1. Under date of October 3, 1975, said defendants submitted to the Court a revised joint plan for the establishment by the Detroit Board of Education of area vocational education centers in Detroit.

2. For the purpose of effectuating the establishment of area vocational education centers in Detroit, each defendant board of education adopted a motion(s) at its respective meeting held on February 24, 1976. A copy of the motion adopted by the State Board of Education is attached hereto as Exhibit A and made a part hereof. A copy of the motions adopted by the Detroit Board of Education is attached hereto as Exhibit B and made a part hereof.

3. Each board of education will implement the undertakings set forth in its motion(s) (Exhibits A and B). In the implementation of such undertakings, each board of education will act pursuant to and will comply with all applicable state and federal statutes, rules and regulations.

[2] 4. The location of the site for each vocational education center, the construction of such center (whether it be by new construction, the renovation of a building now owned by the Detroit Board of Education, or by the acquisition and renovation of an existing building), and the assignment of pupils to each vocational education center will be subject to the prior approval of the Court.

5. Title to the area vocational education centers shall be vested solely in the Detroit Board of Education and such centers shall be owned solely by the Detroit Board of Education.

RILEY AND ROUMELL

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Dated:



**EXHIBIT A**

February 24, 1976

**Allocation of Federal Vocational Education Funds for the Construction of Five Vocational Centers Under Order of Judge Robert DeMascio**

Ms. Kelly moved, seconded by Mrs. Miller, that the State Board of Education resolve to provide 50 percent of the construction cost of the five area vocational centers which Judge Robert DeMascio has ordered be constructed in the Detroit School System and, further, that the State Board of Education advise staff to submit to it a revised State Plan for Vocational Education for its approval and submission to the Office of Education. Approval of the revised Plan is a condition precedent to acceleration of the construction schedule of the five area vocational schools. It is the intent of the Board that the construction of the Detroit vocational centers be accomplished if possible within a three-year period. The foregoing is contingent upon the following provisions: (1) that the Detroit Board of Education commit 50 percent of the construction costs of the aforesaid vocational centers, (2) that sufficient funds, primarily federal vocational funds, and if possible, additional funds be available to the Board for allocation under this provision, and finally that the Detroit Board of Education comply in all steps of construction of these centers with all applicable state and federal statutes, rules and regulations as the same pertain to each area vocational center being constructed or constructed in the past.

Ayes: Dumouchelle, Henry, Kelly, Miller, Riethmiller, Stockmeyer
Nay: Vandette
Absent: Roberts

The motion carried.

## EXHIBIT B

## REPORTS FROM THE GENERAL SUPERINTENDENT

### Area Vocational Centers

Superintendent Jefferson reviewed for the information of the Board that pursuant to a Court Order, hearings were commenced February 17, 1976 in the Federal District Court regarding the funding of the Area Vocational Centers. Following two days of the hearings, Judge DeMascio ordered counsel for the defendants and the plaintiffs; State Superintendent of Public Instruction, Dr. Porter; the President of the State Board of Education; the President of the Detroit Board of Education, who was represented by the Vice President of the Board and the Chairman of the Finance Committee; and Superintendent Jefferson to meet in his chamber on February 19. During the course of that meeting the financial implications of the vocational education component previously ordered by the Court November 10, 1975 were discussed. In the course of these discussions it was agreed by State Superintendent Porter and Superintendent Jefferson to make the following recommendations to their respective Boards regarding financing of the area vocational centers.

> It is recommended that the Detroit Board of Education agree that the Detroit Public Schools will pay 50% of the total cost of the construction, acquisition, and/or renovation of area vocational centers to meet the educational specifications necessary to provide employable skills to approximately 10,000 students in the Detroit School System. This agreement is contingent on the State Board of Education also agreeing to pay 50% of the total cost of these area vocational centers. It is further stipulated these funds must be made available with a maximum of a five-year period.

Superintendent Jefferson requested Board approval of the recommendation.



It was moved by Member McFadden, supported by Member Kennedy, that the Board approve the recommendation of the Superintendent.

Carried.

(Member McDonald entered the meeting.)

Superintendent Jefferson further stated that one of the area vocational centers to be constructed or acquired and renovated will devote most of its activities to the development of construction trades skills and competencies with minor emphasis on the manufacturing trades. He said both the Detroit Board and staff recognizes that it would constitute a gross disservice to the students and the City of Detroit if a vocational education area center [2] specializing in the construction trades were to become operational without specific agreements having been reached between the construction trades unions and the school system which stipulate that any qualified graduate of the center would be assured entry into the apprenticeship program of the construction trades. The Detroit Board of Education articulated the need for such agreements in its joint submission to the Court dated October 3, 1975. Superintendent Jefferson said that need is reemphasized again today and, with this in mind, the following recommendation is submitted for approval:

> Prior to initiating the construction, acquisition, and/or renovation of a construction trades area vocational center, the Board of Education must have assurances from the various trade unions that its qualified graduates will be accepted for employment. Therefore, it is recommended that the Detroit Board of Education instruct its counsel to take whatever steps are necessary to obtain assistance from the Federal Court in achieving these agreements.

It was moved by Member Murray, supported by Member Jordan, that the Board approve the recommendation of the Superintendent.

Carried.

President Golightly, in commenting with regard to the vocational education component, expressed the hope that the Board of Education and administration would be continually aware of the necessity of keeping the academic quality of a total high school program so that the students who go through these vocational centers and choose careers that require going on to college would have the opportunity to do so.

Dr. Jefferson reaffirmed that it was not the intent of staff to develop any program that would limit any student or that would meet the needs of only a selected few. Any vocational/technical programs that are instituted in the school system will be available to all students regardless of what their professional life aspirations are. The Superintendent noted also that this is the first educational component ordered by the Court; however, it should not be construed that it is the first in importance. Staff is equally concerned about the other educational components — reading, bilingual, in-service, counseling and guidance, and all those that were part of the August 15, 1975 Order. He said that with the support of the Board, staff would continue to press toward getting these programs implemented also.



**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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| **RONALD BRADLEY, et al., Plaintiffs,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al., Defendants.** | **Civil No. 35257** |

**JUDGMENT**

Pursuant to the Findings of Fact and Conclusions of Law contained in our August 15, 1975 Memorandum Opinion and pursuant to the Memorandum and Order filed this date;

IT IS ORDERED AND ADJUDGED that:

This court's November 4, 1975 order to implement a student reassignment plan shall continue in effect until modified or otherwise made the subject of a subsequent court order;

PROVIDED, HOWEVER, that on or before August 16, 1976 the defendant Detroit Board of Education shall submit an amendment to the November 4, 1975 desegregation plan in conformance with the foregoing requirements;

a) Said amended plan shall, where feasible, further compliance with the court's guidelines, the August 15, 1975 Memorandum Opinion and Partial Judgment, and all other orders of this court with respect thereto;

b) Said amended plan shall include a report disclosing accurate demographic data;

[2] c) Said amended plan shall include a list of all schools disclosing therefor the number of students black and white attending each school and the official capacity for each school, and

d) Said amended plan shall provide that student enrollment does not exceed official capacity at any school;

IT IS FURTHER ORDERED AND ADJUDGED that:

The Detroit Board of Education shall proceed forthwith to take all steps necessary to equalize all school facilities and buildings preparatory to the September 1976-1977 school term;

IT IS FURTHER ORDERED AND ADJUDGED that:

The Detroit Board of Education shall continue the comprehensive construction and renovation program as mandated in this court's August 15, 1975 Partial Judgment (pp. 13-14) as amended (Oct. 24, 1975) and consistent with subsequent court orders related thereto;

IT IS FURTHER ORDERED AND ADJUDGED that:

The defendant Detroit Board of Education and the state defendants shall, on or before the start of the September 1976 school term, institute comprehensive programs for:

a) Reading and communication skills

b) In-service training

c) Testing

d) Counselling and career guidance

PROVIDED, HOWEVER, that the Detroit Board shall disclose to the state defendants its highest budget allocated in any year for each of these above-enumerated quality



education programs [3] ordered herein, and thereafter the state defendants and the Detroit Board shall compute the excess cost in addition thereto occasioned by the specific implementation of the court-ordered programs, and the state defendants and the Detroit Board shall thereafter equally bear the burdens of such excess cost imposed by the provisions contained in this judgment and previous orders directing implementation of said educational components consistent with all orders and memoranda relating thereto;

PROVIDED FURTHER, HOWEVER, that the state defendants and the Detroit Board shall take all necessary steps to utilize existing funds already allocated or to be allocated and by reallocating existing or new funds, and shall thus provide for the full implementation of the educational components ordered herein commencing with the 1976-1977 school term;

PROVIDED FURTHER, HOWEVER, that the Detroit Board shall take steps forthwith to adjust its priorities for the 1976-1977 budget to further assure the implementation of the educational components mandated herein;

IT IS FURTHER ORDERED AND ADJUDGED that:

The Detroit Board of Education and the state defendants shall institute a vocational education program consistent with all the memoranda and orders heretofore issued by the court and pursuant to the stipulations and resolutions submitted by each defendant board, which are attached as an appendix to the memorandum filed this date;

IT IS FURTHER ORDERED AND ADJUDGED that:

The Detroit Board of Education shall institute a comprehensive program for bilingual/multi-ethnic studies that [4] complies with state requirements as contained in MCLA §§340.360, 340.390-395;

IT IS FURTHER ORDERED AND ADJUDGED that:

The Detroit Board of Education shall institute and implement each and every provision relating to the Uniform Code of Student Conduct consistent with each and every order relating thereto;

IT IS FURTHER ORDERED AND ADJUDGED that:

The Detroit Board of Education shall forthwith institute a comprehensive school-community relations (parental involvement) program as provided in the memorandum filed this date and each and every previous memorandum and order relating thereto;

IT IS FURTHER ORDERED AND ADJUDGED that:

The state defendants shall continue to provide the monitoring services until further order of the court;

IT IS FURTHER ORDERED AND ADJUDGED that:

1) The court's jurisdiction in this cause shall be continuing and the parties hereto shall be subject to change orders filed pursuant to the court's jurisdiction;

2) All previous orders of the court, not inconsistent with this judgment, shall remain in full force and effect unless amended or modified by the court in furtherance of its jurisdiction or upon motion of any party and all such previous orders shall be incorporated in this judgment as though fully set forth;

IT IS FURTHER ORDERED AND ADJUDGED that:

The defendants Detroit Board of Education, the General Superintendent therefor, his administrative staff, the Regional [5] Boards and each Board member thereof, the Regional Superintendent, his staff and all other administrative personnel, the State Board of Education and each member



thereof, the Superintendent of Public Instruction, the Attorney General, the State Treasurer, and officers, agents, servants, employees and attorneys and all other persons in active concert or participation with them who receive notice of the court's orders are HEREBY ORDERED to implement the provisions of this judgment and to comply with each provision contained herein.

ROBERT E. DeMASCIO /s/
Robert E. DeMascio
United States District Judge

Dated: May 11, 1976

**Nos. 75-2018, 75-2295-96, 75-2443, 76-1635, 76-1678**

**UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

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| **RONALD BRADLEY, et al., Plaintiffs-Appellants,**<br><br>**v.**<br><br>**WILLIAM G. MILLIKEN, Governor of Michigan, et al., Defendants-Appellees and Cross-Appellants,**<br><br>**Board of Education of the City of Detroit,**<br><br>**Defendants-Appellees and Cross-Appellants,**<br><br>**Detroit Federation of Teachers, Intervening Defendant and Cross-Appellant.** | **Appeal from the United States District Court for the Eastern District of Michigan.** |

Decided and Filed August 4, 1976.

Before: PHILLIPS, Chief Judge, and EDWARDS and PECK, Circuit Judges.

PHILLIPS, Chief Judge. When this school desegregation case was filed in August 1970, Ronald Bradley, one of the

black plaintiffs, had been assigned to enter the kindergarten of a Detroit school whose enrollment was 97 per cent black. [2] There have been numerous court proceedings since that time, culminating in the opinion of the Supreme Court in *Milliken* v. *Bradley*, 418 U.S. 717 (1974), reversing the en banc decision of this court reported at 484 F.2d 215 (1973). The Supreme Court remanded with directions for "prompt formulation of a decree directed to eliminating the segregation found to exist in Detroit city schools, a remedy which has been delayed since 1970." 418 U.S. at 753.

This court now reviews appeals and cross-appeals from various orders and decisions of the District Court, two of which are reported at 402 F.Supp. 1096 (1975) and 411 F.Supp. 943 (1975).

In September 1976 Ronald Bradley is scheduled to enter the sixth grade of the Clinton School, which now is more than 99 per cent black.[1] The decisions of the District Court which we now review do nothing to correct the racial composition of the Clinton School. They grant no relief to Ronald Bradley nor to the majority of the class of black students he represents.

Nevertheless, this court finds itself in the frustrating position of having to leave standing the results reached by the District Judge on the issue of assignment of students, although we disagree with parts of his opinions and orders. Our affirmance is found to be necessary for the simple reason that reversal would be an exercise in futility under the situation now existing in the Detroit school system and the law of this case as established by the Supreme Court in *Milliken* v. *Bradley*.

Other questions raised by the appeals of various parties will be discussed later in this opinion.

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1. The charts submitted by the Detroit Board show the Clinton School to be 100 per cent black.



## I. Prior Findings as to Constitutional Violations

This litigation had its genesis under modest circumstances. On April 7, 1970, before the filing of any suit, the Detroit Board [3] of Education on its own initiative adopted a plan to effect a more balanced distribution of black and white students in 12 of the 21 Detroit high schools. The April 7 plan was to take effect over a three-year period, applying initially to those students entering the tenth grade in September 1970. In the eleventh grade the plan was to have been effected at the opening of the 1971-72 school year and the twelfth grade at the beginning of the 1972-73 school year. The plan was designed to reduce segregation in a school system that then was 63.6 percent black.

On July 7, 1970, however, the Governor of Michigan signed into law Act No. 48, Public Acts of 1970. Section 12 of this Act had the effect of delaying and ultimately blocking the implementation of Detroit's April 7 plan. The four members of the Detroit Board of Education who supported the April 7 plan were removed from office through a recall election. Four new members were appointed by the Governor of Michigan. These four members, together with the incumbent members, who had opposed the April 7 plan from its inception, thereafter rescinded it.

The complaint in the present case was filed August 18, 1970. Among other things, the complaint prayed for a preliminary injunction requiring defendants to put into effect the plan adopted by the Detroit Board of Education on April 7 and restraining the defendants from giving any force or effect to § 12 of Act 48 insofar as it would inhibit immediate implementation of the April 7 plan. On September 3, 1970, the late District Judge Stephen J. Roth denied plaintiffs' application for a preliminary injunction. Plaintiffs immediately filed a notice of appeal and a motion in this case for injunction pending appeal.

On September 8, 1970, the day of the opening of the 1970-71 Detroit school term, the Chief Judge of the Sixth

Circuit heard oral arguments on the application for an injunction to place the April 7 plan in effect pending appeal. The Chief Judge entered [4] an order denying the application for injunction pending appeal and advanced the case on the docket of this court for argument on its merits. In an opinion announced October 13, 1970, reported at 433 F.2d 897, this court held § 12 of Michigan Act 48 to be unconstitutional, ruled that the District Court did not abuse its discretion in denying the preliminary injunction and remanded the case for a trial on the merits. On remand, the District Court again refused to put the April 7 plan into effect. The plaintiffs moved for summary reversal or injunction pending appeal. In an opinion reported at 438 F.2d 945 (1971), this court again remanded the case to the District Court for a hearing on the merits.

After extensive hearings, Judge Roth found as a fact that de jure segregation existed in the Detroit public schools. 338 F.Supp. 582 (1971). Included in his findings of fact were the following:

> [W]e find that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit. 338 F.Supp. at 592.

This court held that the foregoing findings of fact by Judge Roth were not clearly erroneous, Fed. R. Civ. P. 52 (a), but to the contrary were supported by ample evidence. We said:

> The discriminatory practices on the part of the Detroit School Board and the State of Michigan revealed by this record are significant, pervasive and causally related to the substantial amount of segregation found in the Detroit school system by the District Judge.
> 484 F.2d at 241.



The constitutional violations found to have been committed by the Detroit Board of Education are discussed in some detail at 484 F.2d 221-38. The constitutional violations found to have been committed by the State of Michigan are discussed at 484 F.2d 238-41.

[5] We do not read the opinion of the Supreme Court as disagreeing with or disturbing in any way the findings of unlawful segregation with respect to the Detroit school system. To the contrary, as pointed out above, the Supreme Court remanded the case with a mandate for "prompt formulation of a decree directed to eliminating the segregation found to exist in Detroit city schools, a remedy that has been delayed since 1970." 418 U.S. at 753.

## II. The Remedy

It is the law of this case that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in creating the de jure segregation which exists in the public schools of Detroit. The principal question to be resolved on the present appeal involves the remedy. District Judge Stephen J. Roth died July 11, 1974. The responsibility for providing a remedy in obedience of the mandate of the Supreme Court was assigned to District Judge Robert E. DeMascio, author of the opinions reported at 402 F.Supp. 1096 and 411 F.Supp. 943, which are involved on the present appeal.

### a) Previous Efforts to Effect a Remedy

After his finding of de jure segregation, Judge Roth grappled with the problem of fashioning a remedy in accordance with *Swann* v. *Board of Education*, 402 U.S. 1 (1971), *Monroe* v. *Board of Commissioners*, 391 U.S. 450 (1968), *Green* v. *County School Board*, 391 U.S. 430 (1968) and *Brown* v. *Board of Education*, 349 U.S. 294 (1955). Initially he contemplated a "Detroit only" solution. A motion was made to add other school districts as parties defendant. Judge Roth reserved a decision on this motion

pending submission and consideration of desegregation plans. 338 F.Supp. at 595.

Judge Roth required the school board defendants, Detroit [6] and State, to develop and submit plans of desegregation, "designed to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." Three "Detroit only" desegregation plans were submitted by the plaintiffs and by the Detroit Board of Education. Judge Roth found that:

> [W]hile plaintiffs' plan would accomplish more desegregation than now obtains in the system, or which would be achieved under Plan A or C of the Detroit Board of Education submissions, none of the plans would result in the desegregation of the public schools of the Detroit school district. . . . [R]elief of segregation in the Detroit public schools cannot be accomplished within the corporate geographical limits of the city. 345 F.Supp. at 916 (1972).

Judge Roth concluded that he had the duty to look beyond the limits of the Detroit school district for a solution to the illegal segregation in the Detroit public schools. 345 F.Supp. at 916.[2]

The parties submitted a number of plans of metropolitan desegregation, including six by the State Board of Education (made without recommendation), all of which were rejected. Judge Roth thereupon appointed a nine member panel "charged with the responsibility of preparing and submitting an effective desegregation plan." 345 F.Supp. at 916.

This was the posture of the decision of Judge Roth at the time four interlocutory orders were reviewed by the Court of Appeals under 28 U.S.C. § 1292 (b), together with one final

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2. The findings are quoted in full at 484 F.2d 242-45.



order relating to the purchase of school buses. No desegregation plan was ever adopted by Judge Roth or approved by this court.

As already noted, this court agreed with Judge Roth that the State of Michigan had committed acts of de jure segregation. [7] In ruling on the interlocutory appeal, we also agreed that the State controls the instrumentalities whose action is necessary to remedy the harmful effect of the State acts, 484 F.2d at 245-49, and concluded:

> In the instant case the only feasible desegregation plan involves the crossing of the boundary lines between the Detroit School District and adjacent or nearby school districts for the limited purpose of providing an effective desegregation plan. 484 F.2d at 249.

We said:

> This court in considering this record finds it impossible to declare "clearly erroneous" the District Judge's conclusion that any Detroit only desegregation plan will lead directly to a single segregated Detroit school district overwhelmingly black in all of its schools, surrounded by a ring of suburbs and suburban school districts overwhelmingly white in composition in a State in which the racial composition is 87 per cent white and 13 per cent black. 484 F.2d at 249.

This court held that it would be within the equity power of the District Court to adopt a plan of desegregation extending beyond the boundaries of the Detroit School District. We remanded the case to the District Court for the taking of additional evidence because several of the suburban school districts had not been heard or had an opportunity to be heard. We held that as a prerequisite to the implementation of a plan affecting any school district, "the affected district

must be made a party to this litigation and afforded an opportunity to be heard." 484 F.2d at 250-52.[3]

[8] The Supreme Court reversed the decision of this court, holding that no remedy involving any school district other than Detroit would be within the equitable power of the District Court without evidence that the suburban district or districts had committed acts of de jure segregation. In his separate concurring opinion, Mr. Justice Stewart explained the grounds for reversal in this language:

> In reversing the decision of the Court of Appeals this Court is in no way turning its back on the proscription of state-imposed segregation first voiced in *Brown* v. *Board of Education*, 347 U.S. 483, or on the delineation of remedial powers and duties most recently expressed in *Swann* v. *Charlotte-Mecklenburg Board of Education*, [9] 402 U.S. 1. In *Swann* the Court addressed itself to the range of equitable remedies available to the courts to effectuate the desegregation mandated by *Brown* and its progeny, noting that the task in choosing appropriate relief is "to correct . . . the condition that offends the Constitution," and that "the nature of the violation determines the scope of the remedy . . . ." *Id.*, at 16.

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3. The interlocutory decisions of Judge Roth, which were affirmed by this court, have been misunderstood and reported erroneously. It has been said that Judge Roth ordered, and this court approved, the consolidation of the Detroit School District with 53 suburban school districts, or that Judge Roth established a desegregation panel and ordered it to prepare a remedial plan consolidating the Detroit system and 53 suburban school districts. Such reports are incorrect. *See, e.g., Hills* v. *Gautreaux*, ——— U.S. ———, 44 U.S.L.W. at 4480, (U.S. Apr. 20, 1976). We have found nothing in any opinion or order of Judge Roth evidencing any intention to consolidate any school districts. He apparently contemplated a remedy which would have left the suburban districts intact but would have involved one or more of them in a metropolitan plan of pupil transportation.

Moreover, this court never indicated an intention to require the consolidation of any school districts. The interlocutory order affirmed by us merely created a panel "charged with the responsibility of preparing and submitting an effective desegregation plan." So far as the record shows, this panel never made a report. It is reemphasized that no specific plan of desegregation was ever adopted by Judge Roth or approved by this court.



The disposition of this case thus falls squarely under these principles. The only "condition that offends the Constitution" found by the District Court in this case is the existence of officially supported segregation in and among public schools in Detroit itself. There were no findings that the differing racial composition between schools in the city and in the outlying suburbs was caused by official activity of any sort. It follows that the decision to include in the desegregation plan pupils from school districts outside Detroit was not predicated upon any constitutional violation involving those school districts. By approving a remedy that would reach beyond the limits of the city of Detroit to correct a constitutional violation found to have occurred solely within that city the Court of Appeals thus went beyond the governing [10] equitable principles established in this Court's decisions. 418 U.S. at 757.

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Apparently there has been confusion between this case and *Bradley* v. *School Board of the City of Richmond*, 462 F.2d 1058 (4th Cir. 1972), *aff'd* by an equally divided court, 412 U.S. 92 (1973), where the District Court ordered the consolidation of three separate Virginia school districts.

This court distinguished the Detroit case from the Richmond case in the following language:

> Bradley v. School Board of the City of Richmond, 462 F.2d 1058 (4th Cir. 1972), aff'd by an equally divided court, 412 U.S. 92, 93 S.Ct. 1952, 36 L.Ed.2d 771 (1973), is distinguishable in several respects. In that case the District Court ordered an actual consolidation of three separate school districts, all of which the Court of Appeals for the Fourth Circuit declared to be unitary. In the instant case the District Court has not ordered consolidation of school districts, but directed a study of plans for the reassignment of pupils in school districts comprising the metropolitan area of Detroit. In the Richmond case the court found that neither the Constitution nor statutes of Virginia, previously or presently in effect, would have permitted the State Board of Education, acting alone, to have effected a consolidation of the three school districts into a single system under the control of a single school board. The Fourth

**b) The Remedy at Issue on Present Appeals**

District Judge DeMascio was faced with an extremely difficult (if not impossible) assignment, confronted as he was with the responsibility of formulating a decree which would eliminate the unconstitutional segregation found to exist in the Detroit public schools, without transgressing the limits established by the Supreme Court.

Like Judge Roth, Judge DeMascio required the plaintiffs and the Detroit Board of Education to submit desegregation plans. Like Judge Roth, he rejected both plans as unsatisfactory. By his opinion of August 15, 1975, 402 F.Supp. 1096-1147, he outlined the details of this involved litigation, made findings of fact and adopted remedial guidelines. By his opinion of November 4, 1975, 411 F.Supp. 943, the District Judge adopted a desegregation plan drafted by the Detroit Board in accordance with the August 15 guidelines. Reference is made to these two opinions for a recitation of pertinent facts. Various amendatory and supplemental orders also have been entered by the District Court, which will be mentioned in this opinion only to the extent necessary to dispose of issues raised on this appeal.

The plaintiffs-appellants attack the plan as "bizarre" and urge its reversal. The Detroit Board of Education contends

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Circuit held that compulsory consolidation of political subdivisions of the State of Virginia was beyond the power of a federal court because of the Tenth Amendment to the Constitution of the United States. The decisions which now are under review did not contemplate such a restructuring.

Furthermore, the court in the Richmond case cited provisions of the Constitution and statutes of Virginia in support of its holding that —

> "The power to operate, maintain and supervise public schools in Virginia is, and always has been, within the exclusive jurisdiction of the local school boards and not within the jurisdiction of the State Board of Education." 462 F.2d at 1067.

The record in the present case amply supports the finding that the state of Michigan has not been subject to such limitations in its dealings with local school boards. 484 F.2d at 250-51.



that the plan is constitutional and should be affirmed. The State defendants take the position that the pupil assignment plan meets constitutional requirements for desegregating the Detroit school system and should be affirmed, but contend that the District Court exceeded its authority in requiring certain "educational components" and in directing that the State pay 50 per cent of the cost of these programs.

The plan adopted by the District Court became effective as of the beginning of the winter-spring semester, 1976. As [11] of September 26, 1975, the Detroit public schools enrolled 247,774 students, 75.1 per cent of whom were black. In broad outline the plan adopted by the District Court required the reassignment of 27,524 students, of whom 21,853 would require bus transportation. The plan changed the racial balance in 105 schools out of approximately 300 zoned schools in the system. Prior to the implementation of the plan approximately 80 schools had enrollments of a majority of white students. Under the District Court's plan, 67 of these schools received black students through transportation and rezoning. The result of the student reassignments is that no school in Detroit, with two marginal exceptions, will have an enrollment of less than 30 per cent black students. Moreover, 47 of the previously white schools have become more than 40 per cent black.

In addition, 38 schools, the majority of which previously were at least 80 per cent black, received white students via transportation and rezoning. Under the plan 25 of these schools became 45 to 55 per cent black. Furthermore, at least 23 of Detroit's schools, enrolling approximately 22,599 students, contain a substantial mix of black and white students without any student reassignment.

In order to effectuate the reassignment of students, the District Court ordered the purchase of 250 school buses.[4]

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4.

In an order dated June 19, 1975, published at 519 F.2d 679, *cert. denied*, 423 U.S. 930 (1975), this court modified and affirmed the order of the District Court requiring the purchase of 150 school buses. We directed that the Detroit School Board acquire the buses and that the State defendants bear the costs of acquisition to the extent of 75 per cent thereof. On October 8, 1975, the District Court ordered the Detroit Board of Education to acquire 100 additional buses, with 75 per cent of the costs to be paid by the State.

Finally, the District Court ordered the closing of certain antiquated schools, the establishment of vocational centers available on a non-racial basis to all qualifying students, and certain Educational Components, hereinafter discussed in further detail.

To the credit of the citizens of Detroit, the record discloses [12] that the court's plan, although implemented in the middle of a school year, was accepted in an orderly manner and in a spirit of community cooperation, without substantial disruption or disorder.

Although some improvements have been accomplished by the District Court, the plan contains glaring defects that could never pass constitutional muster and would not be contenanced by this court in a different factual situation.

As of September 1974, prior to the implementation of the plan, the percentages of black students in the eight school regions were as follows:

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|---|---|
| Region # 1 | 90.3% black |
| Region # 2 | 60.3% black |
| Region # 3 | 70.8% black |
| Region # 4 | 55.5% black |
| Region # 5 | 96.7% black |
| Region # 6 | 63.1% black |
| Region # 7 | 45.2% black |
| Region # 8 | 95.2% black |

402 F.Supp. at 1106.

Notwithstanding the reassignments effected by the District Court, the percentage of black students in each of the eight regions remains substantially unchanged under the adopted plan. Only twelve of the 157 zoned schools with previous enrollments over 90 percent black have become under 90 percent black. Approximately half of Detroit's schools remain more than 90 percent black. Moreover, the three regions which contain the highest concentration of black



students, regions 1, 5 and 8, remain virtually untouched. This means that approximately 83,000 students are granted no relief from unconstitutional de jure segregation.

The Supreme Court has said that the existence of some one-race schools "is not in and of itself the mark of a system that still practices segregation by law." *Swann* v. *Charlotte-*[13] *Mecklenburg Board of Education,* 402 U.S. 1, 26 (1971). We recognize that the overwhelming number of black students in Detroit and their concentration in the inner city undoubtedly makes some one-race schools unavoidable under any "Detroit only" remedy. However, when the Detroit School Board virtually eliminated regions 1, 5 and 8 from both its initial plan and the plan finally adopted, it assumed the heavy burden of justifying its elimination of the schools located in these three regions. In *Swann* the Supreme Court stated:

> Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scruitinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part. 402 U.S. at 26.

The Board's burden of jurisdiction is particularly heavy in this case because the three regions which the Board has left untouched, in the inner city, are in the area most affected by the acts of de jure segregation of which both the Detroit and State defendants have been found guilty.

The records discloses no adequate justification for excluding regions 1, 5 and 8 from the plan. The principal testimony pertaining to the reasons for excluding the inner city from student reassignments came from Merle Henrickson, Director of Planning and Building Studies for the

Detroit Board. Mr. Henrickson stated that the inner city "was beyond the limits of possible treatment." Exclusion of the inner city was necessary; in his view, in order to maintain "the racial mix of desegregated schools." The result of desegregating the inner city, he predicted, would be white flight.

[14] The need for stability in a desegregation plan was emphasized by the Supreme Court in *Pasadena City Board of Education* v. *Spangler*, — U.S. —, 44 U.S.L.W. 5114 (U.S. June 28, 1976). Apprehension of white flight, however, cannot be used to deny basic relief from de jure segregation. As said by the Supreme Court in a slightly different context:

> The primary argument made by the respondents in support of Chapter 31 is that the separation of the Scotland Neck schools from those of Halifax County was necessary to avoid "white flight" by Scotland Neck residents into private schools that would follow complete dismantling of the dual school system. Supplemental affidavits were submitted to the Court of Appeals documenting the degree to which the system has undergone a loss of students since the unitary school plan took effect in the fall of 1970. But while this development may be cause for deep concern to the respondents, it cannot, as the Court of Appeals recognized, be accepted as a reason for achieving anything less than complete uprooting of the dual public school system. See *Monroe* v. *Board of Commissioners*, 391 U.S. 450, 459. *United States* v. *Scotland Neck Board of Education*, 407 U.S. 484, 490-91 (1972).

The District Court did not subject the exclusion of these three regions to the close scrutiny required by *Swann*. The District Court merely noted:

> Plaintiffs refuse to acknowledge that the racial composition of these three regions precludes their inclusion in a



> desegregation plan. . . . Clearly, it would be futile to attempt desegregation within the boundaries of these regions. . . . 402 F.Supp. at 1129.

This perfunctory treatment of the inner city falls far short of the "root and branch" requirements of *Green* v. *County School Board*, 391 U.S. 430, 437-38 (1968), and the "all-out [15] desegregation" requirements of *Keyes* v. *School District*, 413 U.S. 189, 214 (1973).

In *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33 (1971), Chief Justice Burger, speaking for a unanimous court, held that the eastern part of metropolitan Mobile cannot be treated "in isolation from the rest of the school system." 402 U.S. at 38. It seems equally unacceptable to treat Regions 1, 5 and 8 in isolation from the rest of the Detroit school system.

The Detroit Board of Education contends that the exclusion of Regions 1, 5 and 8 from the plan is supported by the decision of the Supreme Court in *Pasadena City Board of Education* v. *Spangler*, —— U.S. ——, 44 U.S.L.W. 5114 (U.S. June 28, 1976). This contention is without merit. In the present case the plan adopted by the District Court, which we affirm in part, is the *first* remedy adopted in an effort to cure the effects of de jure segregation. We hold this remedy to be insufficient as to Regions 1, 5 and 8. This is not a *Spangler* situation. The Detroit Board also relies on *Washington* v. *Davis*, —— U.S. ——, 44 U.S.L.W. 4789, 4992 (U.S. June 7, 1976). We find this decision to be inapplicable here because it is the law of this case that unlawful de jure segregation, for which both the Detroit Board and State defendants are in part responsible, exists in the Detroit school system.

Even though we do not approve of that part of the District Court's plan which fails to take any action with respect to schools in Regions 1, 5 and 8, this court finds itself unable to give any direction to the District Court which would accomplish the desegregation of the Detroit school system

in light of the realities of the present racial composition of Detroit. *Compare Calhoun* v. *Cook*, 522 F.2d 717 (5th Cir. 1975), *rehearing denied*, 525 F.2d 1203 (1975).

Plaintiffs urge that we reverse and require the District Court to adopt the plan proposed by them. The reasons stated by the District Judge for rejecting plaintiffs' plan are set forth at 402 F.Supp. 1123-25. The District Court found that this proposal [16] would require transportation of 77,000 to 81,000 students and the purchase of approximately 840 school buses. Much of the transportation would be of black students from predominately black schools to other predominately black schools and the plan nevertheless would leave a majority of Detroit's students in schools 75 to 90 per cent black.

Our considered judgment is that plaintiffs' plan would accelerate the trend toward rendering all or nearly all of Detroit's schools so identifiably black as to represent universal school segregation within the city limits. The anticipated positive results, if any, would not justify the expense and hardship that inevitably would be involved. We agree with the District Judge that plaintiffs' plan would not satisfy the Supreme Court's mandate in this case.

A second alternative would be to reverse and order adoption of the plan originally proposed by the Detroit Board of Education. We have considered this alternative carefully and reject it because the plan originally proposed by the Board is not significantly different from the plan adopted by the court. Like the plan adopted by the court, the original Board proposal would have left Regions 1, 5 and 8 unaffected, with no changes in the allocation of students in the predominately black schools in those regions. The Board's original plan is based on the same erroneous theory as the plan adopted by the court — that the mere elimination of identifiably white schools satisfies the criteria of *Brown*.

The Board's proposal as originally suggested might have been preferable to the plan approved by the court. However, the Board now urges affirmance of the plan which it adopted



pursuant to the District Court's guidelines. As pointed out above, this plan has been well received by the citizens of Detroit.

We conclude that the differences between the two plans are so inconsequential that the compulsory adoption of the Board's original plan by order of this court would produce more confusion than any possible good that would be accomplished.

[17] A third alternative would be to reverse and direct that the District Court assign the white students now remaining in the Detroit school system among the predominately black schools on a percentage basis somewhat along the lines originally proposed by plaintiffs. It is obvious that such a requirement would accomplish nothing more than token integration, and that of uncertain duration.

Recognizing the absence of alternatives, we affirm the judgment of the District Court on the issue of assignment of students in areas other than Regions 1, 5 and 8. In affirming the District Judge's limited desegregation plan, we observe that the steps which he has taken thus far appear to us to be consistent with the fourteenth amendment, as interpreted by the Supreme Court in *Milliken* v. *Bradley*, 418 U.S. 717 (1974). We must, however, remand the case for further consideration in regard to the three central regions of the City of Detroit which both the school board and the District Judge excluded from their proposed remedial plans. We cannot hold that where unconstitutional segregation has been found, a plan can be permitted to stand which fails to deal with the three regions where the majority of the most identifiably black schools are located.

We recognize that it would be appropriate for us at this point to supply guidelines to the District Judge as to what he should do under this remand. Omission of such guidelines is not based on any failure to consider the problem in depth. It is based upon the conviction which this court had at the time of its en banc opinion in this case — and for the reasons

carefully spelled out therein — that genuine constitutional desegregation can not be accomplished within the school district boundaries of the Detroit School District.

The record discloses that plaintiffs are proceeding with their efforts to establish the basis for a metropolitan remedy within the Supreme Court's guidelines in *Milliken* v. *Bradley*. See memorandum and order of District Court dated December [18] 19, 1975, 411 F.Supp. 937. Our limited affirmance and remand in this case is without prejudice to the obligation of the District Court to proceed with that aspect of the litigation relating to the proposed metroploitan remedy.

On remand, the District Court will be empowered to make further alterations in the plan heretofore adopted by it, as the evidence may require, not inconsistent with this opinion. *Kelley* v. *Metropolitan City Board of Education*, 463 F.2d 732. 744-45 (6th Cir. 1972), *cert denied*, 409 U.S. 1001 (1972).

### III. Educational Components

Citing the difficulties of the desegregation problems in Detroit, the District Court directed that the Detroit Board and the State put into effect certain comprehensive programs which were found to be essential to the success of the desegregation effort. The programs are referred to in the record as "Educational Components." They include (1) establishment of vocational centers, (2) a comprehensive reading program, (3) an in-service training component designed to prepare faculty and other educational personnel to deal with new experiences that arise in a school system undergoing desegregation; (4) a testing component to insure that testing procedures are fair and equitable and have no discriminatory effects; (5) a uniform code of student conduct with provisions for due process hearings; (6) a program of school community relations; (7) a program of counseling and career guidance and (8) a monitoring system to audit efforts to implement the court's desegregation efforts. Reference is made to those parts of the opinion of the District Court



published at 402 F.Supp. 1138-45 dealing with these Educational Components. This opinion of the District Court has been supplemented by additional orders. The Detroit Board of Education was required to pay the highest amount previously allocated in its budget toward such programs. The remainder of the cost would be paid one-half by the State of Michigan and one-half by the Detroit Board of Education.

[19] On May 11, 1976, the District Court entered a judgment implementing its program of Educational Components. This judgment included the following:

> IT IS FURTHER ORDERED AND ADJUDGED that:
>
> The defendant Detroit Board of Education and the state defendants shall, on or before the start of the September 1976 school term, institute comprehensive programs for:
>
> a) Reading and communication skills
>
> b) In-service training
>
> c) Testing
>
> d) Counselling and career guidance.
>
> PROVIDED, HOWEVER, that the Detroit Board shall disclose to the state defendants its highest budget allocated in any year for each of these above-enumerated quality education programs ordered herein, and thereafter the state defendants and the Detroit Board shall compute the excess cost in addition thereto occasioned by the specific implementation of the court-ordered programs, and the state defendants and the Detroit Board shall thereafter equally bear the burdens of such excess cost imposed by the provisions

contained in this judgment and previous orders directing implementation of said educational components consistent with all orders and memoranda relating thereto;

The Michigan State defendants appeal from the judgment of May 11, 1976, as to these four of the Educational Components, contending that there is no consititutional violation which justifies these remedies and that the District Judge exceeded his lawful authority by ordering the inclusion of these four Educational Components in the remedy in this cause. The Detroit Board of Education, on the other hand, contends that all the Educational Components are within the scope of the equity powers of the court to remedy racial segregation in the Detroit schools because they help to eliminate [20] vestiges of discrimination and because they are a necessary part of the long range desegregation plan.

The District Court found that these Educational Components are necessary "to remedy effects of past segregation, to assure a successful desegregation effort and to minimize the possibility of resegregation." 402 F.Supp. at 1118; May 11, 1976, order at page 3. This finding of fact is not clearly erroneous, but to the contrary is supported by ample evidence.

The need for in-service training of the educational staff and development of non-discriminatory testing is obvious. The former is needed to insure that the teachers and administrators will be able to work effectively in a desegregated environment. The latter is needed to insure that students are not evaluated unequally because of built-in bias in the tests administered in formerly segregated schools.

We agree with the District Court that the reading and counseling programs are essential to the effort to combat the effects of segregation.

In *Brown* v. *Board of Education*, 347 U.S. 483, 494 (1954), the Supreme Court said:



Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the [21] motiviation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

Without the reading and counseling components, black students might be deprived of the motivation and achievement levels which the desegregation remedy is designed to accomplish.

Accordingly, we conclude that the findings of the District Court as to the Educational Components are supported by the record. This is not a situation where the District Court "appears to have acted solely according to its own notions of good educational policy unrelated to the demands of the Constitution." *See, Keyes* v. *School District*, 521 F.2d 465, 483 (10th Cir. 1975), *cert. denied*, 44 U.S.L.W. 3399 (U.S. Jan. 12, 1976). We hold that the District Court acted within its equity powers in requiring the Educational Components as a part of the remedy. The decision of the District Court prescribing these components is affirmed. The matter of

allocation of the costs of these components will be dealt with in part IV of this opinion.

### IV. The Allocation of Costs as Between the State of Michigan and The Detroit Board of Education

Both the State defendants and the Detroit Board appeal from the judgment of the District Court relative to the allocation of the costs of the Educational Components. The local Board also asserts that the State should bear all the cost of 100 additional school buses.

The State defendants assert that the District Court may not, consistent with the eleventh amendment, compel the State to pay for any part of the Educational Components. Reliance is placed upon *Edelman* v. *Jordan*, 415 U.S. 651 (1974).

[22] *Edelman* did not involve payment of State funds "as a necessary consequence of compliance in the future with a substantive federal-question determination" or payments which became due at a time when required by a "court-imposed obligation." At issue was a retroactive award of money relief which the Supreme Court found to be "in practical effect indistinguishable in many aspects from an award of damages against the State." 415 U.S. at 668. The Supreme Court recognized that under *Ex parte Young*, 209 U.S. 123, 150 (1908), expenditure of State funds may be required by a prospective court decree without violating the eleventh amendment, even if the relief has an ancillary effect on the State treasury.

Mr. Justice Rehnquist, speaking for the majority, said:

> The injunction issued in *Ex parte Young* was not totally without effect on the State's revenues, since the state law which the Attorney General was enjoined from enforcing provided substantial monetary penalties against railroads which did not conform to its provisions. Later cases from this Court have authorized



> equitable relief which has probably had greater impact on state treasuries than did that awarded in *Ex parte Young*. In *Graham* v. *Richardson*, 403 U.S. 365 (1971), Arizona and Pennsylvania welfare officials were prohibited from denying welfare benefits to otherwise qualified recipients who were aliens. In *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), New York City welfare officials were enjoined from following New York State procedures which authorized the termination of benefits paid to welfare recipients without prior hearing. But the fiscal consequences to state treasuries in these cases were the necessary result of compliance with decrees which by their terms were prospective in nature. State officials, in order to shape their official conduct to the mandate of the Court's decrees, would more likely have to spend money from the state treasury than if they had been left free to pursue their previous course of conduct. Such an ancillary effect on the state treasury is a permissible [23] and often an inevitable consequence of the principle announced in *Ex parte Young, supra*. (Footnote omitted.) 415 U.S. at 667-68.

The majority opinion recognized that the eleventh amendment would not apply "where a federal court applies *Ex parte Young* to grant prospective declaratory and injunctive relief, as opposed to an order of retroactive payments . . ." 415 U.S. at 666, n. 11.

In *Scheuer* v. *Rhodes*, 416 U.S. 232, 237 (1974), the Supreme Court, speaking through Chief Justice Burger, said:

> The Eleventh Amendment to the Constitution of the United States provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State . . . ." It is well established that the Amendment bars suits not only against the State when it is the named party but also when it is the party in fact. *Edelman* v. *Jordan*, 415 U.S. 651 (1974); *Poindexter* v. *Greenhow*,

114 U.S. 270, 287 (1885); *Cunningham* v. *Macon & Brunswick R. Co.*, 109 U.S. 446 (1883). Its applicability "is to be determined not by the mere names of the titular parties but by the essential nature and effect of the proceeding, as it appears from the entire record." *Ex parte New York*, 256 U.S. 490, 500 (1921).

However, since *Ex parte Young*, 209 U.S. 123 (1908), it has been settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right under the color of state law. *Ex parte Young* teaches that when a state officer acts under a state law in a manner violative of the Federal Constitution, he

> "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected *in his person* to the consequences of his individual [24] conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." *Id.*, at 159-160. (Emphasis supplied.) 416 U.S. at 237.

In *Wright* v. *Houston Independent School District*, 393 F.Supp. 1149, 1158, (S.D. Tex. 1975), a school desegregation case, the court placed the following construction upon *Edelman:*

> The Supreme Court seems to be implying here that the situation is different if the state agency violates a judicially mandated standard of action. In *Edelman* the state agency failed to live up to the standards of a federal regulation, but invalidity of its actions had not yet been detefmined by a court of law. In the instant case, the Houston Independent School District has been ordered by the district court to conduct itself in a specified manner. It has not done so and this may have given rise to a violation of the rights of the plaintiffs herein with accompanying monetary damages. This



> difference in the circumstances may well make the case not subject to the *Edelman* decision.
>
> For these reasons the court has determined that the eleventh amendment does not bar a money judgment for the plaintiffs.

To like effect see *Morales* v. *Turman*, 383 F.Supp. 53, 59-60 (E.D. Tex. 1974).

In *Cooper* v. *Aaron*, 358 U.S. 1, 4 (1958), the Supreme Court said:

> As this case reaches us it raises questions of the highest importance to the maintainance of our federal system of government. It necessarily involves a claim by the Governor and Legislature of a State that there is no duty on state officials to obey federal court orders resting on this Court's considered interpretation of the United States Constitution. Specifically it involves actions by the Governor [25] and Legislature of Arkansas upon the premise that they are not bound by our holding in Brown v. Board of Education, 347 U.S. 483 [74 S.Ct. 686, 98 L.Ed. 873].
>
> * * *
>
> The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedom guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth.

In *United States* v. *Board of School Commissioners of Indianapolis*, 503 F.2d 68, 80, 82 (7th Cir. 1974), *cert. denied*, 421 U.S. 929 (1975), the Seventh Circuit found an affirmative duty on Indiana state officials to assist in desegregating the Indianapolis school system. The court said: "The Eleventh Amendment does not prevent enforcement of the Fourteenth Amendment." 503 F.2d at 82.

In *Bradley* v. *Milliken*, 484 F.2d at 258, this court said:

> In the exercise of its equity powers, a District Court may order that public funds be expended, particularly when such an expenditure is necessary to meet the minimum requirements mandated by the Constitution. Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 233, 84 S.Ct. 1226, 12 L.Ed 256 (1964); Eaton v. New Hanover County Board of Education, 459 F.2d 684 (4th Cir. 1972); Brewer v. School Board of City of Norfolk, 456 F.2d 943, 947, 948 (4th Cir.), cert. denied, 406 U.S. 933, 92 S.Ct. 1778, 32 L.Ed.2d 136 (1972); Plaquemines Parish School Board v. United States, 415 F.2d 817 (5th Cir. 1969).

The opinion of the Supreme Court reversing our decision in *Bradley* did not deal with this subject.

*Wyatt* v. *Aderholt*, 503 F.2d 1305, 1314-15 (5th Cir. 1974), involved an Alabama state school designed to rehabilitate the mentally retarded which was not being operated in a constitutional [26] manner. The State defendants in that case, the Governor, the Alabama Commissioner of Mental Health and the Alabama Mental Health Board, like the State defendants in the present case, asserted that the federal court could not enter a judgment requiring the expenditure of State funds. Judge Wisdom responded to this contention as follows:

> The appellants' fourth contention is that the order of the district court invades a province of decision-making exclusively reserved for the state legislature. Governor Wallace argues that the order will require heavy expenditures of state funds; that these funds will have to come from other state programs; and that the duty of compromising and allocating funds among the many programs competing for them is a duty which must be discharged by the state governor and legislature alone. Governor Wallace concedes in his brief that he is not contending that "the financial cost of complying with an established constitutional right is a valid reason for failure to comply". He "suggest[s] that before the Court



> decides to adopt a new constitutional right it should consider all of the consequences of its action, financial and social, and its effect on our federal form of government". The Mental Health Board makes the point in a related way, by suggesting that the district court's order here is in effect an order requiring the state to furnish a particular service, and by citing cases establishing the general proposition that ordinarily it is not for the federal courts to say whether or in what amounts a state shall provide any particular governmental benefit or service. *E. g.*, Fullington v. Shea, D.Colo. 1970, 320 F.Supp. 500, aff'd, 404 U.S. 963, 92 S.Ct. 345, 30 L.Ed.2d 282.

We find these arguments unpersuasive. It goes without saying that state legislatures are ordinarily free to choose among various social services competing for legislative attention and state funds. But that does not mean that a state legislature is free, for budgetary or any other reasons, to provide a social service in a manner which will result in the denial of individuals' constitutional rights. [27] And it is the essence of our holding, here and in *Donaldson*, that the provision of treatment to those the state has involuntarily confined in mental hospitals is necessary to make the state's actions in confining and continuing to confine those individuals constitutional. That being the case, the state may not fail to provide treatment for budgetary reasons alone. "Humane considerations and constitutional requirements are not, in this day, to be measured or limited by dollar considerations". Jackson v. Bishop, 8 Cir. 1968, 404 F.2d 571, 580 (Blackman, J.), quoted, Rozecki v. Gaughan, 1 Cir. 1972, 459 F.2d 6, 8. "Inadequate resources can never be an adequate justification for the state's depriving any person of his constitutional rights". Hamilton v. Love, E.D.Ark. 1972, 328 F.Supp. 1182, 1194. "[T]he obligation of the Respondents [prison officials] to eliminate unconstitutionalities does not depend upon what the Legislatures may do". Holt v. Sarver, E.D.Ark. 1970, 309 F.Supp. 362, 385, aff'd, 8 Cir. 1971, 442 F.2d 304. See also Hawkins v. Town of

Shaw, 5 Cir. 1971, 437 F.2d 1286, 1292. 503 F.2d at 1314-15.

The decision of the District Court in the present case imposes no money judgment on the State of Michigan for past de jure segregation practices. Rather, the order is directed toward the State defendants as a part of a prospective plan to comply with a constitutional requirement to eradicate all vestiges of de jure segregation. *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969).

The eleventh amendment contention of the State defendants is without merit.

We hold that it is within the equitable powers of the court to require the State of Michigan to pay a reasonable part of the cost of correcting the effects of de jure segregation which State officials, including the Legislature, have helped to create. We reemphasize that it is the law of this case that the State of Michigan has been guilty of acts which have [28] a causal relation to the de jure segregation that exists in Detroit. *See* 484 F.2d at 238-41.

The State defendants have stipulated and agreed to an equal sharing of the costs of the acquisition and construction of the area vocational centers. This court has required the State defendants to bear 75 per cent of the costs of acquiring 150 school buses. 519 F.2d 679 (1975), *cert. denied*, 423 U.S. 930 (1975). The District Court ordered that the cost of acquiring 100 additional school buses be shared on the same basis: i.e., that the buses be purchased by the Detroit Board, with the State bearing 75 per cent of the costs.

On May 11, 1976, the District Court ordered that the State and Detroit Board each pay one-half the costs of the Educational Components. Both the State defendants and Detroit Board appeal from this order. The State defendants contend that the State should not be required to pay any of the cost of these programs other than the normal share of State school aid funds provided to Detroit. The Detroit



Board contends that any requirement that it bear the major financial responsibility for the plan does not result in "balancing the individual and collective interests" as required by *Swann*, 402 U.S. at 16. The Detroit Board asserts that this court should modify the order of the District Court so as to require the State defendants to pay at least 75 per cent of the total costs of the desegregation plan and 100 per cent of the costs of 100 additional school buses.

Since Michigan State officers and agencies were guilty of acts which contributed substantially to the unlawful de jure segregation that exists in Detroit, the State has an obligation not only to eliminate the unlawful segregation but also to insure that there is no deminution in the quality of education. This principle was stated in *Hart* v. *Community School of Brooklyn*, 383 F.Supp. 699 (E.D. N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975), wherein the court described the State's responsibility in a desegregation plan as follows:

> [29] As part of the State's obligation to eliminate segregation, there is, of course, a concomitant obligation to ensure that there is no diminution in the quality of education . . ." 383 F.Supp. at 741.

In *Evans* v. *Buchanan*, 379 F.Supp. 1218 (D. Del. 1974), *aff'd* 423 U.S. 963 (1975), *reh. denied*, 423 U.S. 1080 (1976), the court said:

> Accordingly, it is well established that to the extent that any schools in the State are in violation of Brown and its progeny or of this Court's orders, the State Board must bear primary responsibility." 379 F.Supp. at 1222.

The fiscal justification for the decision of the District Court in requiring that the State of Michigan pay one-half of the costs of the desegregation plan (to the extent specified in the orders and judgments) is supported abundantly by the evidence with respect to the critical financial problems now confronting the Detroit Board of Education. The Board is operating on a "survival budget". The evidence is

summarized in the brief of the Detroit Board, excerpts from which are set forth in the Appendix to this opinion.

We see no reason at this time for upsetting the judgment that the State of Michigan pay 50 percent of the costs of the desegregation plan to the extent prescribed by the District Court. We recognize, however, that it will be difficult for the Detroit Board to pay its share of the costs. (See Appendix.) Our affirmance of the District Court on this issue is not intended as a mandate for a cutback in essential educational programs in order to meet the expenses of implementing the desegregation plan. We affirm that part of the judgment relating to the costs of the plan, but without prejudice to the right of the District Court to require a larger proportionate payment by the State of Michigan if found to be required by future developments.

Our previous order requiring the State to bear 75 per cent [30] of the cost of 150 school buses is reaffirmed. The order of the District Court requiring the State to bear 75 per cent of the cost of the 100 additional school buses is affirmed.

## V. Faculty Desegregation

Originally Judge DeMascio declined to order any reassignment of faculty in response to a proposal by the Detroit School Board that each Detroit school should have a teaching staff half white and half black. On August 28, 1975, however, the District Court entered the following order:

> Pursuant to this court's Memorandum Opinion and order dated August 15, 1975, this court's Supplemental Memorandum and Order dated August 18, 1975, and this court's Order dated August 26, 1975;
>
> IT IS HEREBY ORDERED that incidental to and concurrently with the implementation of the plan of student desegregation as hereafter ordered by the court, teachers in the Detroit School System shall be reassigned insofar as necessary, and subject to collective bargaining agreement provisions otherwise applicable and not inconsistent with this order, to achieve a distribution of not more than 70% of teachers of one race in each school.



The Detroit Federation of Teachers, Intervenors, and the Detroit Board appeal from this order, taking diametrically opposite positions. The teachers contend that it is the law of the case, under findings of fact by both Judge Roth and Judge DeMascio, that there has been no racially discriminatory assignment of Detroit faculty and that there is no lawful predicate for any faculty reassignment order based on race. The Board contends that the court erred in rejecting a 50-50 ratio proposed in the original Board plan. It is asserted that adherence to the District Court's 70 per cent figure has caused the Board to be out of compliance with 45 C.F.R. 185.44 (d) (3), thus preventing the Detroit school system from receiving [31] funds under the Emergency School Aid Act, 20 U.S.C. § 1602 (Supp. II, 1972).[5]

Additionally, the Detroit Board contends that the District Court erroneously ruled as inadmissible: (1) testimony that the balance of staff provisions of the collective bargaining agreement have not brought about the anticipated racial ratios of teachers in individual schools; (2) testimony that teacher transfers were necessary when students were reassigned, grade structures changed and schools closed; and (3) testimony that the racial ratio of teachers must be changed in order to qualify for federal funds.

The State defendants support the position of the teachers. The plaintiffs support the position of the Board.

We reject the contention of the intervenors that the order of Judge Roth, entered in 1971, deprives the Board of Education or the court of power to reassign teachers in 1976. *c.f., Swann*, 402 U.S. 1, 16 (1971); *Keyes* v. *School District*, 521 F.2d 465, 484 (10th Cir. 1975), *cert. denied*, 423 U.S.

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5. The Emergency School Act makes no distinction between de jure and de facto segregation. 20 U.S.C. § 1602(b).

1066 (1976); *see also, Morgan* v. *Kerrigan*, 509 F.2d 580, 595 (1st Cir. 1974), *aff'g*, 379 F.Supp. 410 (D. Mass. 1974), *cert. denied*, 421 U.S. 963 (1975).

It is significant that Judge Roth's order of June 14, 1972 (dealing with a contemplated metropolitan remedy), 345 F.Supp. 914, 931, 938, made provisions for reassignment of faculty.

The reassignment of faculty is similar to the reading and counseling "Educational Components" which we have upheld in Part III of this opinion. It helps to mitigate the fact that the majority of Detroit's children are left in schools that are overwhelmingly one race. Reassignment of faculty serves to provide these children with the maximum desegregative experience possible under the circumstances.

[32] In fashioning a desegregation remedy which involves reassignment of faculty it is obvious that, if otherwise feasible, a District Court should leave a school system in compliance with applicable federal regulations. We express no views in this opinion as to whether the above quoted August 28 order of the District Court disqualifies the Detroit school system from receiving aid.[6] This question is not before us.

Although the District Court has the authority as an equitable remedy to order the reassignment of faculty, we conclude that further consideration should be given to this issue. Accordingly, we vacate the above-quoted order of the District Court, dated August 28, 1975, and remand this aspect of the case to the District Court for the hearing of the evidence on the issue of faculty assignment.

## VI. Conclusion

The case is remanded to the District Court for further proceedings not inconsistent with this opinion. No costs are taxed. Each party will bear his own costs on this appeal.

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6. See 42 U.S.C. § 2000d-5 (1970).



[33]

## APPENDIX

Financially, the Detroit school system has been devastated by a series of compounding economic crises. The period between 1970 and 1976 has marked an all-time low in the system's ability to absorb and compensate for the costs of educating Detroit's children.

The cost of education is a function of the size of a school district. (TR. Vol. 7 at 110-111). The Detroit system is the largest school district in the State and encompasses the largest number of indigent students in Michigan. (TR. Vol. 25 at 88). The cost of providing educational services in Detroit has gone up disproportionately to the continuing above-state average drop in school enrollment. (TR. Vol. 24 at 131). This cost increase reflects the additional cost of doing business, without improving educational services. (TR. Vol. 24 at 125-126; Vol. 7 at 85-86).

Actually, since 1971, the Detroit school system has experienced severe financial crisis as a result of the loss of property tax revenues by virtue of urban renewal and highway construction; the exodus of business and industries to the suburbs and the concomitant outward population flow from the city. (TR. Vol. 7 at 92). At the same time, the system was experiencing escalating educational costs forcing the Board into a "survival" budget under which the system was forced to provide only minimal educational services while eliminating many crucial educational programs.

By 1973, the system had accumulated a 68 million dollar deficit and was within four days of closing its doors due to the lack of funds. (TR. Vol. 7 at 82). As a result of special state legislation, the Detroit system was able to finance its debt over a period of years and continue operations utilizing a portion of the operating budget for repayment. However, by law the Detroit Board was required to operate within a balanced [34] budget which has necessitated a continuation of the "survival" budget instituted in 1971.

The Detroit school system is financed by property taxes as allocated by the Wayne County Tax Allocation Board and as voted by the electors of the school district, by declining State Aid supplied by the state legislature based upon the number of students in the school district and the State Equalized Value (SEV) of property in the district and by special funds from the Michigan legislature and from federal sources. (TR. Vol. 7 at 87-90, 93, 95, 105; Vol. 25 at 106-107; Detroit Board Ex. 42 and 43). State Aid comprised approximately 47% of the total 1974-75 budget and federal funding provided approximately 15% of that budget. The Detroit Board does not have the power nor the authority to levy an income tax to finance school operations, nor can the Board levy additional millage without a favorable vote of the electorate. (TR. Vol. 7 at 86; Vol. 24 at 151; 157; Vol. 26 at 20).

Detroit's municipal tax overburden is a function of its size and the result of the many municipal services provided by Detroit which are not provided or required by other municipalities but which are utilized by citizens of the entire southeastern Michigan area.

Over the past five years, Detroit's SEV has remained relatively static compared to the increasing SEV of the rest of the State. The School Aid Act provides a power equalizing formula to supply a more uniform flow of State revenue to school districts to remedy the widely variant per pupil SEV. The per capita SEV in Detroit is 50% lower than the average for the 20 largest cities in Michigan, thus requiring more millage to be levied by Detroit taxpayers to obtain an equal yield. (TR. Vol. 7 at 105; Detroit Board Ex. 31).

The municipal overburden inequities have been recognized by the State and school aid is supplied school districts whose municipal overburden is in excess of 125% of the state average. [Bursley Act, MCLA 388.1225; MSA 15.1919 (525)]. While [35] the power equalizing membership section of the Act, in which all qualifying school districts can share, is fully funded, the municipal overburden section of the Act



is presently funded by only approximately 28% of the total amount authorized. Detroit, with the greatest overburden in the State, presently received 91% of the allocated funds in the overburden section of the Act pursuant to the formula.

If the overburden section were fully funded, the Detroit system would receive an additional 61.6 million dollars. If it were funded by 50% (as was done in 1972-73), the system would receive an additional 18.7 million dollars more than is presently received. It is clear that the State does not provide the Detroit Board with all the money in State aid which it should or could.

On July 1, 1975, the Central Board of Education adopted a 1975-76 general fund-general purpose budget in the amount of $310,231,253. The budget as adopted was a balanced budget based upon projected revenue and anticipated expenditures. However, total anticipated revenues from state, local and federal sources were short of meeting expenditure requirements by $4,691,496. In order to balance the budget at $310,231,253 an allocation of $4,691,496 was required from prior year general fund equity to close the gap between revenues and expenditures.

The 1975-76 budget is essentially a continuation of the inadequate level of educational services of the past several years. In January, the Detroit Board cut close to $17 million from its budget for the second half of the school year. Annualized, this cut amounted to about $34 million. At the time, this was close to 15% of the Board's general purpose budget. In addition, emergency cuts of $10.7 million were instituted during the 1973-74 school year. Annualized savings from these said year cuts are about $20 million. Detroit has not been able to restore the programs and services eliminated or curtailed as a result of these further budget costs.

[36] Expenditures have been reduced and postponed each year since 1971. The cumulative effects of past cutbacks have already begun to have serious consequences for educational programs. Continuing these cuts merely compounds the damage. Each year it becomes more costly to restore these

services because of the inflationary spiral. For those students who have left the system, it is already too late to have any effect regardless of cost.

Subsequent to adoption of the 1975-76 budget, state aid revenue which had been originally estimated at $159,318,160 were reduced to $152,467,601 as a result of decreases in the municipal overburden allocation to Detroit, a .6% statutory reduction, a 1.7% executive order reduction, and various other state aid adjustments. In order to maintain school programs and services, the $6,850,559 reduction in state aid was replaced from prior year general fund equity.

In addition, a number of supplemental budget allocations were required in 1975-76 to meet mandatory operating costs in such areas as transportation, bilingual/bicultural programs and building operation and maintenance. Based upon the total supplemental appropriations and replacement of state aid revenue losses, the Detroit school district faces a potential budgetary deficit of approximately $5,700,000 in 1975-76. The general fund equity accumulated from prior years will be completely exhausted.

Estimated general fund-general purpose expenditure requirements for 1976-77 are approximately $336 million.[1] This estimated level of expenditure reflects only the increased cost of doing business in 1976-77 at the same level of services as 1975-76. The increases in cost are of a nondiscretionary nature and include negotiated salary adjustments and increments of $20,000,000, inflationary increases of $4,500,000, and a contingency for unanticipated charges equal to 1% of the total [37] budget or $3,360,000. Except for those desegregation components implemented this year, i.e., pupil transportation and bilingual/bicultural, no provision has been made for desegregation costs.

With regard to projected reserve, there is a potential gap of over $37 million between estimated 1976-77 expenditure

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1. This compares with 310.2 million dollars in 1975-1976. There will be no general fund equity to supplement any increases.



requirements and current year reserve estimates. This gap will have to be closed by reducing the projected level of expenditure through an additional cutback in educational programs and services and/or increasing revenues. If additional revenues are not obtained from local or state sources, existing programs and services would have to be cut by up to $37 million to balance the 1976-77 budget. If a deficit is incurred in 1975-76, that amount would also have to be included as part of the budget cuts required in 1976-77.

At least three state aid bills are currently before the legislature. It is unlikely that the state will fund any appreciable increase in state aid for 1976-77. Consequently, at best, state revenues for next year will be at the same level as in 1975-76.

The record reflects, and the District Court so found, that there is no possibility of the citizens of Detroit voting additional millage for operation of the school system in the near future. Detroit taxpayers shoulder the highest tax burden in the State. (TR. Vol. 24 at 146-147; Detroit Board Ex. 30, 41). Additionally, Detroit taxpayers have the highest municipal tax overburden in Michigan. (TR. Vol. 7 at 104, 109-114; Vol. 24 at 147; Detroit Board Ex. 33). Detroiters pay a 28.58% higher property tax rate than the State average. (TR. Vol. 24 at 146; Detroit Board Ex. 41). Of the past eight millage elections for additional revenue, seven have failed and a reasonable expectation is that no additional millage will be voted in the near future. (TR. Vol. 24 at 143-144, 147, 150-151; Vol. 7 at 140, 144; Detroit Board Ex. 40).

Notwithstanding this dismal prediction by the District Court, the Detroit Board plans to place a millage proposal before [38] the electorate of the City of Detroit for a 3 mill tax to maintain existing programs and a 2 mill tax for modest improvements (App. at 35a) in a desperate attempt to increase revenues for the 1976-77 school year. This millage proposal was preceded by a recent vote of the electorate which increased taxes to finance a court ordered construction of a new jail facility. Again, the immediate tax burden of

Detroit residents has been increased, and the Detroit Board's request must follow closely on the heels of this recent tax burden increase. Additionally, the legislature and the City Council have just voted a 3 mill garbage tax. Similarly, City of Detroit property owners will pay a 2-2.5 mill tax increase for City debt retirement (App. at 35a).

In light of all the above, the financial impact of implementing the District Court's adopted desegregation plan is readily apparent upon a cursory review of the relevant orders of the District Court between August 15, 1975 and May 11, 1976.

On August 15, 1975, the District Court (App. at 1a-15a) ordered, exclusive of transportation costs, the establishment of four vocational centers; formulation of two additional technical high schools patterned after Cass Tech; institution of comprehensive programs for a) in-service training, b) bi-lingual/multi-ethnic studies, c) counseling and career guidance, d) testing, and e) co-curricular activities; equalization of all school facilities and buildings; and comprehensive construction and restoration programs.

On October 29, 1975 (App. at 16a-19a), the District Court ordered the Detroit Board to devise an in-service training program for all school personnel to provide instruction in the "fair, non-discriminatory" administration of the Student Code of Conduct; and an in-service training program for the reading program.

Later, on November 10, 1975 (App. at 20a-22a), the District Court ordered the Detroit Board and the State Defendants to jointly identify and acquire suitable sites for five vocational [39] centers and take steps to construct such sites as soon as possible; and the in-service training of reading instructors.

On December 4, 1975 (App. at 25a-26a), the District Court ordered implementation of the Detroit Board's October 8, 1975 proposal for a reading instruction program, including in-service training of all instructors.



On January 14, 1976 (App. at 27a-29a), the District Court ordered the institution of the Detroit Board's Modernization Program.

Finally, on May 11, 1976 (App. at 30a-34a), the District Court ordered equalization of all school facilities and buildings preparatory to the 1976-77 school term; continuance of the comprehensive construction and renovation program; the institution of a reading and communication skills program together with the necessary in-service training therefor the institution of the testing program with the accompanying in-service training; institution of the counseling and career guidance program with the accompanying in-service training; the application of a formula for equal sharing of excess cost of implementing the educational components by the Detroit Board and the State Defendants; institution of the vocational education program; institution of a comprehensive program for bi-lingual/multi-ethnic studies; and institution of the in-service training program for implementation of the Uniform Code of Conduct.

Even without actual dollar figures, the financial impact of these orders could easily destroy the educational program of the Detroit school system. The financing of these components by the Detroit school system would only mean a concomitant elimination of existing programs.

It is virtually impossible for the Detroit Board of Education to re-order its priorities when it is already operating on a woefully inadequate budget that cannot provide a minimal quality educational program. Any attempt to redistribute available [40] resources will cause further deterioration in on-going educational programs and will merely result in robbing Peter to pay Paul.

Nevertheless, the school district is required by law to adopt a balanced budget by July 1. In order to do so, expenditure requirements will have to be reduced to the level of expected revenue. This will mean a drastic cut in existing programs and services. The school district will not even be

able to maintain current levels of educational programming; therefore, it would certainly be a futile gesture to consider funding the increased costs of implementing desegregation components.

The May 11, 1976 Judgment appealed presents a highly structured and effective desegregation plan. However, the Judgment fails to establish a satisfactory financing scheme to properly and equitably dispense the costs of underwriting such a plan.



Office of the Clerk
**UNITED STATES COURT OF APPEALS**
FOR THE SIXTH CIRCUIT
Cincinnati, Ohio 45202

John P. Hehman
Clerk

August 4, 1976

Re: Ronald Bradley, et al., vs. William G. Milliken, Governor of the State of Michigan, et al.
Our Nos. 75-2018, 75-2295-6, 75-2443, 76-1635, 76-1678
Dist. Ct. Civil No. 35257

Gentlemen:

The Court today announced its decision in the above-entitled case.

A copy of the Court's opinion is enclosed, and a judgment in conformity with the opinion has been entered today as required by Rule 36, Federal Rules of Appellate Procedure.

Each party will bear its own costs on this appeal.

Very truly yours,
John P. Hehman, Clerk

By
BETTY TIBBLES /s/
Betty Tibbles
Deputy Clerk

Enclosure